

Volume 3

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Charles R. Breyer, Judge

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL RICHARD LYNCH and
STEPHEN KEITH CHAMBERLAIN,

Defendants.

NO. 3:18-CR-00577-CRB

San Francisco, California
Tuesday, March 19, 2024

TRANSCRIPT OF JURY TRIAL PROCEEDINGS

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Official United States Court Reporters

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9:16 a.m.

P R O C E E D I N G S

--oOo--

(Jurors enter courtroom.)

(Proceedings were heard in the presence of the jury:)

THE COURT: Please be seated. Let the record reflect all jurors are present, the parties are present, witness has resumed the stand.

You may proceed, Mr. Leach.

MR. LEACH: Thank you, Your Honor.

(Witness previously sworn.)

DIRECT EXAMINATION (resumed)

BY MR. LEACH:

Q. Good morning, Mr. Vaidyanathan.

A. Good morning.

MR. LEACH: Good morning, ladies and gentlemen.

BY MR. LEACH:

Q. When we broke yesterday, you were testifying that Mr. Hogenson was fired within a month after you met with Mr. Chamberlain in the Bay Area about various accounting issues you were observing. Do you recall that testimony?

A. Yes.

Q. I'd like to step back a little bit in time and focus on some of the issues relating to FileTek that you were observing in the June 2010 time period.

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1 **MR. LEACH:** First of all, if you could please go back
2 to Exhibit 314 or please display Exhibit 314, which is in
3 evidence.

4 **THE CLERK:** 3314.

5 **MR. LEACH:** 3314. Excuse me.

6 And if you could zoom in, Mr. Hasan, to the top portion of
7 the email. Down a little bit more, please. First half of the
8 document.

9 **BY MR. LEACH:**

10 **Q.** And Mr. Vaidyanathan, do you recall this is a May 26,
11 2010, email to Brent Hogenson about payroll issues?

12 **A.** Yes.

13 **Q.** And you're writing about how payroll was transitioned to
14 someone named Lourdes -- from Lourdes to someone named Kerrie
15 in May of 2010?

16 **A.** Yes.

17 **Q.** You see that language in the first line?

18 **A.** Uh-huh.

19 **Q.** And Lourdes was somebody who had worked at Autonomy well
20 before you arrived?

21 **A.** Yes.

22 **Q.** Okay. And in Item No. 1 you wrote "4 employees continuing
23 to get paid post their termination." Do you see that?

24 **A.** Yes.

25 **Q.** Was that one of the accounting issues that you identified?

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1 A. Yes.

2 Q. It then says in No. 2, "Several other cases of employees
3 being paid twice." Is that another issue that you identified
4 in this time period?

5 A. Yes.

6 Q. And you're sending this to Brent Hogenson. Was
7 Mr. Hogenson supportive of your efforts to identify issues
8 relating to payroll?

9 A. Yes.

10 Q. And generally speaking, was Mr. Hogenson someone you
11 enjoyed working with?

12 A. Absolutely.

13 Q. And was he supportive of looking these accounting issues
14 and trying to escalate them --

15 A. Yes.

16 Q. -- to his superiors?

17 And these payroll issues, do these relate to employees who
18 were looking under Mr. Hussain and Mr. Chamberlain well before
19 you and Mr. Hogenson ever arrived at Autonomy?

20 A. Yes. They were reporting to Cynthia Watkins, the
21 controller of Autonomy at that point in time. Payroll reported
22 up into her, and she reported up into Mr. Chamberlain.

23 Q. Okay. And the date of this is May 26, 2010?

24 A. Yes.

25 MR. LEACH: Let's move forward in time, please, and

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1 I'll move to admit Exhibit 3320.

2 **THE COURT:** 3320 admitted.

3 (Trial Exhibit 3320 received in evidence)

4 **MR. LEACH:** Thank you, Your Honor.

5 And if we could start on page 2, Mr. Hasan, and highlight
6 that top half of the email.

7 **BY MR. LEACH:**

8 **Q.** Mr. Vaidyanathan, do you see the date of June 17th, 2010?

9 **A.** Yes.

10 **Q.** And the subject is FileTek?

11 **A.** Yes.

12 **Q.** Okay. You wrote "Hi Brent, Date of agreement-12/31/2009.
13 Payment-January 2010. Order through FileTek-3/31/10. Second
14 purchase from FileTek-5/12/10." What were you trying to
15 communicate here to Mr. Hogenson?

16 **A.** Mr. Hogenson had asked me specifically for the FileTek
17 agreement, the date of the agreement, the payments to FileTek,
18 any orders from FileTek, any other purchases subsequent to that
19 date. So all I did was give him the list of what he had asked
20 for.

21 **MR. LEACH:** Okay. And if we could go to page 1,
22 Mr. Hasan.

23 **BY MR. LEACH:**

24 **Q.** And we see down at the bottom portion of this email
25 Mr. Hogenson writes "What are the dollar amounts?" Do you see

1 that?

2 **A.** Yes.

3 **Q.** And you write back further up in the chain the initial
4 payment dated 12/31/09 was approximately 10 million and you
5 identify the second one as approximately 11 million and you say
6 the total was 21 million. Was that the amount of the FileTek
7 software that Autonomy was purchasing?

8 **A.** Yes. That is one of the components, correct.

9 **Q.** Okay. And was the dollar amount of those transactions
10 part of what was giving you some concern in this June 2010 time
11 period?

12 **A.** Yes.

13 **Q.** And was the fact that FileTek also had payables to
14 Autonomy part of your concern?

15 **A.** That is correct.

16 **Q.** Were you concerned about something called "roundtrips"?

17 **A.** That is absolutely correct.

18 **Q.** And I understand you met with Mr. Chamberlain in the
19 United States in the June 2010 time period and spoke to him
20 about some of the issues you were observing?

21 **A.** Yes.

22 **MR. LEACH:** Let me draw your attention to Exhibit 918,
23 and I'll move to admit 918.

24 **THE COURT:** 918 admitted.

25 (Trial Exhibit 918 received in evidence)

1 **BY MR. LEACH:**

2 **Q.** And before I get to 918, Mr. Vaidyanathan, why are
3 roundtrips a concern to you?

4 **A.** A roundtrip transaction typically means two things. You
5 have a purchase transaction and a sale transaction at the same
6 time and what it means is if it's not appropriately accounted
7 for, then you'd record a purchase on one side and you'd record
8 a sale on the other side. So typically the results of the
9 effort channel stuffing. So I'm saying it would result in
10 recording a purchase on one side and a sale on the other side.
11 This also is also referred to as channel stuffing. And channel
12 stuffing essentially refers to the concept of sending the
13 reseller or getting an order from the reseller towards the last
14 sort of few days of the quarter, typically the -- you know, for
15 enterprise software companies that's a very common thing to get
16 orders in the last sort of the quarter -- the last few days of
17 the quarter.

18 The issue there, though, is if you resell to a reseller,
19 you're ideally supposed to have some sort of an end user
20 notated to that sale so that you can actually prove the actual
21 sale was to a third-party and not just to the reseller.

22 And there's nothing wrong with selling to a reseller if
23 reseller wants to purchase it for his own consumption, but
24 typically what happens is, a reseller acquires the software
25 with the intent of selling it to other parties, and so the

1 construct there is if you're trying to sell it to another
2 party, then you would have identified the other party already
3 and you would have made a sale to the other party already and
4 the name of the other party would have been notated on the
5 agreement. So that -- that's what we were looking for, and
6 that's what channel stuffing is.

7 So typically if you -- the reason why everybody looks down
8 at channel stuffing is because of the fact that, you know, if
9 you don't have an appropriate end user identified, then there's
10 a potential that you could have an increase in sales without a
11 potential end user in sight.

12 Q. Thank you.

13 Focusing on Exhibit 918, if we could look at the top half
14 of the document, please. Is this an email you received from
15 Mr. Chamberlain on or about June 28th, 2010?

16 A. Yes.

17 Q. And do you see the subject "Various"?

18 A. Yes.

19 Q. And Mr. Hogenson was copied on this correct?

20 A. Yes.

21 Q. Okay. I want to go through the top paragraph with care,
22 if we could.

23 Mr. Chamberlain wrote "Ganesh-just wanted to drop you a
24 note regarding your efforts this quarter. You have got hold of
25 the rest of the US group very quickly and identified a number

1 of shortfalls, and we can now work together to remedy them over
2 the next quarter or so." Do you see that?

3 A. Yes.

4 Q. Is this after your meeting with Mr. Chamberlain in the
5 United States?

6 A. Yes.

7 Q. Mr. Chamberlain then wrote, "This has been a stark lesson
8 for me in terms of, quote, 'you get what you pay for' and has
9 really highlighted that if you want quality people, you need to
10 pay for it." What did you understand that to mean?

11 A. Because the issues that we identified were far more on the
12 legacy -- legacy companies that Autonomy had previously
13 acquired, I think the idea was to, A, give me kudos; and
14 secondly, to say that maybe the quality of the people that they
15 had previously hired was not nearly up to the level that they
16 wanted.

17 Q. You then -- Mr. Chamberlain wrote "We have one run the US
18 organization too lean over the last few years, and the result
19 is a combination of poor bookkeeping and the other item we have
20 seen over this weekend." Do you see that reference to another
21 item we have seen this weekend? What did you understand that
22 to refer to?

23 A. It was around that time that we identified the payroll
24 fraud. It's a little hazy, but I think the reference was to
25 that.

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1 Q. Okay.

2 A. Because that came towards that particular point in time as
3 well.

4 Q. When you say the payroll fraud, what do you mean?

5 A. So there was a payroll fraud happening on the Autonomy,
6 Inc., sort of legal entity. The payroll provider -- the
7 payroll sort of employee who was running the payroll and the
8 books, Lourdes, was siphoning off money from the payroll almost
9 every other payroll. We basically let her go based on the
10 payroll issues that we identified, and once we let her go, she
11 submitted a claim for unemployment. Once she submitted a claim
12 for unemployment, we -- the department, thankfully, sends us
13 a -- sends the employers a letter to verify her last known
14 salary. Interestingly enough, all the amounts that she had
15 taken basically showed up in that -- in that number because she
16 had faithfully reported them to the IRS.

17 So once we dug deep into exactly whether that is true or
18 not, we found a lot more inconsistencies. We found that she
19 was getting far more in terms of salary than she was duly
20 authorized per her employment letter to get and we basically
21 found that out, we found out -- we then dug through -- she was
22 using a particular sort of code, earnings code to basically
23 syphon the funds and we basically went and did a research on if
24 anybody else was using that code, did anybody else get paid.
25 So as a result we identified that a GL accountant in the group,

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1 a general ledger accountant, who was charged with basically
2 supervising the payroll and basically doing payroll
3 reconciliations, was also in the fraud, and so she was getting
4 paid along with her payroll counterpart. So we found that out.

5 **Q.** Thank you. You've used "we" there a couple of times
6 Mr. Vaidyanathan, and I just want to make sure I understand.
7 Are you the one who discovered this?

8 **A.** Yes. I discovered this. I was -- I shouldn't take all
9 the credit myself, but my payroll person in Interwoven, Andrea
10 Campana, she --

11 (Reporter seeks clarification.)

12 **THE WITNESS:** Andrea Campana. She was the payroll
13 person in Interwoven, and she was running -- she was charged
14 with getting all the payrolls together. I had asked her to
15 take a look at the details of the payroll system and basically
16 get all the information. So once she looked at what I asked
17 her to look at, she basically got all the details. That's why
18 I use the term "we."

19 **BY MR. LEACH:**

20 **Q.** And was Mr. Hogenson supportive of these efforts?

21 **A.** Absolutely.

22 **Q.** Okay. And when you discovered that Lourdes may have been
23 taking money from Autonomy, what did you do? Who did you call?

24 **A.** I called the GC, then Joel Scott, and then I think he then
25 called UK and Cambridge. I think he spoke with Steve

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1 Chamberlain as well as Shushovan I think at the time -- that's
2 what he told me.

3 And after that, we had conversations almost every day in
4 terms of what was going on, what details do we know. And the
5 idea then was to get a third-party sort of forensic firm
6 involved at some point. So that was the conversations that we
7 had over that weekend when we discovered it.

8 Q. And at some point you had direct conversations with
9 Mr. Chamberlain --

10 A. Yes.

11 Q. -- about it?

12 A. Yes.

13 Q. And you believe it was over the weekend in this email
14 referenced here?

15 A. Yes.

16 Q. So somewhere around June 28th, 2010?

17 A. Yes.

18 Q. And in your mind, was Mr. Hogenson in any way responsible
19 for this payroll fraud?

20 A. Absolutely not.

21 Q. Were you responsible in any way for this?

22 A. Absolutely not.

23 Q. I want to move forward in time, please, if we could, to
24 July 2010, and at some point did you learn that Mr. Hogenson
25 had been let go from Autonomy?

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1 A. Yes.

2 Q. How did you learn that?

3 A. I learned it subsequently after he got to let go; but
4 before he got let go, Steve Chamberlain called me that morning
5 and he said you will see a bunch of changes happening, there's
6 been a lot of -- there are lots of things that you don't know
7 that have happened and you'll see actions. I just want to you
8 know that you're okay and, don't worry, we'll get through this
9 was the gist of the conversation that I had with Steve that
10 day.

11 Q. Okay. What happened next?

12 A. I was in San Jose. There was a bunch of people. My
13 colleagues, Percy Tejada, Reena Prasad, Glenn Fong, all of them
14 were in the San Francisco office and I was told subsequently
15 that Reena Prasad, Percy Tejada got to let go, one after the
16 other by Joel Scott and one of his attorneys in the
17 San Francisco office. So obviously we -- I got to know about
18 it post fact, and I was in San Jose, so I wasn't there when the
19 firing happened.

20 Q. And at some point did you meet with Mr. Scott?

21 A. Yes. That was subsequent to that. It was I think two
22 days or a week -- within a week of that, week or two of
23 Brent's -- after Brent had been fired.

24 Q. And was Mr. Tejada in any way responsible for this payroll
25 fraud?

1 A. No.

2 Q. Ms. Prasad?

3 A. No.

4 Q. At some point after the firings of Mr. Hogenson,
5 Mr. Tejeda and Ms. Prasad, did you have another conversation
6 with Steve Chamberlain about what happened?

7 A. Yes.

8 Q. Was this over the phone?

9 A. Yes. This was over the phone.

10 Q. Okay. Take a moment and describe for us what
11 Mr. Chamberlain said to you.

12 A. So one of my worries and confusion was we all were
13 doing -- in my mind or in our minds -- the right thing. And
14 the idea there was to surface the issues, get resolution and
15 get to the right answer, get to the bottom of the issue.

16 And I did the same thing, Reena did the same thing, Percy
17 did the same thing, Brent was doing the same thing in my
18 opinion. They were not doing anything different.

19 So my question was, everyone else got to let go, I didn't.
20 And I was kind of -- whether you call it, survivor's guilt or
21 whatever it is, I was surprised and shocked. So one of my
22 questions or one of my main questions to Steve was, okay, why
23 me? Why am I still around? If everybody else got fired, I
24 should have been fired too. I mean, I didn't do anything
25 dramatically different from the others.

1 And his response to that was, no, you surfaced issues;
2 others did other things.

3 And I said, well, what were those things? I'm not
4 necessarily sure how their things related to -- were different
5 from the stuff that I did.

6 And I was told that, well, you don't know, there's a lot
7 of things you don't know and lots of things have happened over
8 the last week, week, two weeks, and it's a result of that that
9 this has happened.

10 **Q.** Did Mr. Chamberlain make any comments to you about the
11 reseller transactions that you had brought to his attention?

12 **A.** Yes. So I asked him about that as well and he said we
13 talked about the reseller transactions, we talked about all
14 this; what is going on, I'm quite concerned.

15 And his response was, well, he had spoken to Shushovan and
16 he was upset about it himself. He had spoken to Shushovan and
17 Shushovan was -- well, he said, well, okay, he -- he had done
18 that but he -- we are going to walk away from those practices
19 on a go-forward basis.

20 And one of the things that Steve said to me was, he had
21 made it very clear to Shushovan that if this continued in the
22 future then potentially he was going to basically resign.

23 **Q.** I want to make sure I understand some of the things you
24 said. So did Mr. Chamberlain say that he was not very happy
25 with the reseller deals as well?

1 A. Yes.

2 Q. And what did you understand that to mean?

3 A. Well, I -- my understanding was that those transactions
4 were not entirely the way that they were supposed to have been
5 done, so which meant that in other words they were accounted
6 for inappropriately, at the very least; and therefore, when he
7 had this conversation with Shushovan my assumption, based on
8 conversations that I had was, well, it was water under the
9 bridge at this point, we're not going to do this anymore, we
10 are going to do the right thing on a go-forward basis.

11 Q. Did Mr. Chamberlain tell you in substance that Mr. Hussain
12 was directing this?

13 A. Yes.

14 Q. And did Mr. Chamberlain say to you in substance that we
15 should not have been accounting for it this way?

16 A. Yes.

17 Q. Did Mr. Chamberlain say in substance to you that he knew
18 that Autonomy was taking a risk?

19 MR. SEILIE: Objection, leading.

20 THE COURT: Sustained.

21 BY MR. LEACH:

22 Q. Did the concept of risk-taking come up in this
23 conversation, Mr. Vaidyanathan?

24 A. Yes.

25 Q. What was said?

1 **A.** The conversation was in prior quarters, in prior years
2 maybe we had -- maybe the Autonomy had taken a few more risks
3 than necessary and the idea was, okay, we are done with all
4 that right now, and that was it. That was the substance of the
5 conversation.

6 **Q.** When you say "Done with all of that," what did you
7 understand that to mean?

8 **MR. HEBERLIG:** Your Honor, I'm going to object to the
9 understanding. He can express what words were spoken.

10 **THE COURT:** Overruled.

11 **THE WITNESS:** So my understanding there was the
12 reseller deals were the key portion of the topic, so my
13 understanding was that we'd have no more deals of that nature
14 on a go-forward basis.

15 **BY MR. LEACH:**

16 **Q.** And why would -- in your mind would you no longer have
17 deals of that nature going forward?

18 **A.** It basically meant that you would focus on the business
19 rather than focusing on targets and numbers.

20 **Q.** I think you said Mr. Chamberlain told you that he
21 threatened to quit.

22 **A.** If this happened again, yes.

23 **Q.** What did he say?

24 **A.** He said, well, he had this conversation with Shushovan and
25 if -- if this happened again then he had told Shushovan then

1 that I'd quit as well, this can't go. This can't go on
2 anymore.

3 **Q.** Did the concept of FileTek or Capax or a company called
4 Microtech come up in these conversations?

5 **A.** It might have. I don't recollect at this point.

6 **Q.** When Mr. Chamberlain told you the reseller deals would not
7 happen again, what did you understand that to refer to?

8 **MR. SEILIE:** Objection, calls for speculation.

9 **THE COURT:** Overruled.

10 **THE WITNESS:** So I think the reseller deals were --
11 the resellers were the FileTek, Capax, those kind of parties,
12 and I knew that they were resellers in any case. And so when
13 he said those reseller-type deals that happened at quarter end
14 without end users names on it was what I was thinking that he
15 was referring to, that those would not happen again.

16 **BY MR. LEACH:**

17 **Q.** And in this conversation with Mr. Chamberlain did he say,
18 in words or substance, that Autonomy should not have been
19 accounting for it this way?

20 **A.** He said generally we shouldn't be doing -- we shouldn't
21 have done it that way and he said Shushovan took more risks
22 than necessary at that point.

23 **Q.** Let me move forward in time, Mr. Vaidyanathan, to the
24 third quarter and the fourth quarter of 2010. In that time
25 period after Mr. Hogenson was left -- let go, did you observe

1 that responsibilities relating to revenue were taken away from
2 you?

3 **A.** Yes.

4 **Q.** What happened?

5 **A.** So previously the revenue responsibilities were with the
6 US team. That was taken over to -- what was explained to us
7 was there were lots of things that are happening. Information
8 is not in one place. Information is there in the -- at
9 headquarters in the UK as well as here. Given that we have
10 more of the information available in the UK, it made sense for
11 the accounting to be done for revenue from the UK.

12 **Q.** Who told you that?

13 **A.** Steve.

14 **Q.** Was that frustrating to you?

15 **A.** Yes, it is, because typically when you look at
16 responsibilities, you would like to have everything. I had a
17 title of director of accounting and you take away revenue from
18 that, then it becomes just only part of accounting, not the
19 entire piece of accounting. So it was -- from a career
20 standpoint wasn't great.

21 **Q.** In your own mind did you feel as if information was being
22 kept from you?

23 **MR. SEILIE:** Objection, calls for speculation.

24 **THE COURT:** Overruled.

25 **THE WITNESS:** So given what happened, my sense was the

1 reason they wanted to keep it in the UK was because of the
2 events that had happened in -- over summer of 2010 and because
3 we had found certain issues, linkages and things of that
4 nature, the construct there was, okay, if we do the accounting
5 in the UK, it might be easier, at least wouldn't raise that
6 many flags.

7 **BY MR. LEACH:**

8 **Q.** When you say "they," who do you mean?

9 **A.** I mean the management, the management in the UK from a
10 finance standpoint, Shushovan and team there.

11 **Q.** I want to focus on the topic of hardware,
12 Mr. Vaidyanathan. At some point in time did you learn that
13 Autonomy was reselling hardware?

14 **A.** Yes.

15 **Q.** What did you learn?

16 **A.** So two things. Initially it started off as -- because of
17 the fact that we were selling hardware, we were selling
18 software, it made more sense to sell appliances to customers.
19 And by appliances, typically one gets the feeling that it is
20 basically a hardware on which your software is mounted. And
21 typically what happens on appliances, the hardware is designed
22 in such a manner that it accommodates the nuances of the
23 software that is mounted on top of it. So, in other words, the
24 software is made to order and the software -- sorry. The
25 hardware is made to order and the software then works with the

1 hardware to produce one joint cumulative experience for the
2 customer. So that's how it started off. We were doing -- we
3 were doing it previously with EMC and then we standardized on
4 Dell. And the idea there was more people have Dell, and at
5 that time Dell and EMC were not combined, to the best of my
6 recollection, and the idea was more people have Dell servers
7 and things of that nature, so it made more sense to standardize
8 on Dell. And so the hardware was bought separately, the
9 software was sold separately. I didn't see them usually being
10 sold as an appliance.

11 Typically what happens in an appliance sale is, the
12 hardware is drop shipped, the software is mounted on the
13 hardware and then shipped to the -- to the customer eventually.

14 Sometimes it so also happens that the hardware is sent
15 directly to the -- to the end user. The software is downloaded
16 on to that machine by the -- by the customer himself, plus
17 professional services from the company, they help the company
18 mount the software on the hardware. So both options are
19 possible.

20 I never saw a situation at Autonomy where the -- where we
21 were selling a true appliance where we were selling a software
22 mounted on top of a hardware, then selling them both to the
23 customer. They were drop shipped, so the assumption was the
24 customer was basically installing the software on the hardware
25 themselves.

1 Q. You said a lot there, sir, and I just want to make sure
2 I'm tracking. You've used the word "appliance" a couple of
3 times.

4 A. Yes.

5 Q. What do you mean by appliance?

6 A. So an appliance is a combination of hardware and software.
7 And as I said, the appliance -- the hardware is engineered to
8 make sure to make sure the software works seamlessly with the
9 product, gives the end user a more wholesome experience.

10 Q. Can you give us an example of an appliance that we might
11 be familiar with?

12 A. This is usually a firewall, it's usually typically behind
13 the scenes. So as most firewalls work, you have a server and
14 then the software sits on top of the server. The software does
15 pretty much most of the work, but the software is the -- it
16 works with the hardware that is engineered to prevent --
17 engineered to make sure that it prevents all the malicious
18 attacks from the outside. So that's one example.

19 And there are multiple. I mean, there is -- you could
20 have software engineered with hardware all the time,
21 multiple -- multiple companies in the valley have tried it
22 before. They are -- the fad went out I think about 2012, 2013
23 timeframe.

24 Q. All right. And in this 2010 time period, did you observe
25 Autonomy selling appliances with hardware and software on it,

1 or did you observe something different?

2 **A.** I observed them selling hardware and the overall
3 understanding was that they were selling appliances. That's
4 what I was told.

5 **Q.** Who told you that?

6 **A.** Steve.

7 **Q.** Okay. Was that convincing to you?

8 **A.** Sorry?

9 **Q.** Was that convincing to you?

10 **A.** Not really because I was seeing hardware being shipped.
11 There's no correlation between the hardware and the software
12 sale that was being made, unless they were being made at a
13 different level.

14 And typically you would see all these softwares that are
15 supposed to work with an appliance are not easily downloadable
16 by the user, so it requires some sort of professional services
17 to basically make sure the software actually works well with
18 the hardware assuming that you're shipping the hardware
19 separately and the software separately.

20 **Q.** And what types of hardware did you observe Autonomy
21 selling in this 2010 time period?

22 **A.** So initially it started off with servers. Initially it
23 started off with a bunch of hardware, various kinds, various
24 processing capabilities and such. Subsequently it devolved
25 into sales of anything that Dell sold. So we were selling

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1 mice, backpacks, adapters, you name it. So they were not
2 necessarily things you would mount any Autonomy software on,
3 but I came to the understanding that it was -- we were selling
4 hard -- we were reselling Dell's hardware to customers and we
5 were selling that as -- at a loss to the -- to the customer.

6 So the idea was, theoretically, you're making a lot of
7 profit on the software and if you throw in the hardware as
8 well, then potentially the customer gets -- he's more sticky,
9 he's more inclined to buy. The idea was to basically -- you're
10 making a loss on the hardware, but you're making up for the
11 money on the software side.

12 Q. Who told you that?

13 A. That also came from Steve.

14 Q. Did you view selling backpacks as selling an appliance?

15 A. No.

16 Q. Did you view selling mice as selling an appliance?

17 A. Absolutely not.

18 Q. Did you view selling monitors as selling an appliance?

19 A. No.

20 Q. Was Autonomy selling laptops and desktops too?

21 A. Yes.

22 Q. And did you view those as selling appliances?

23 A. Yeah, no. I mean, I would have expected, from an
24 appliance standpoint, that you sell servers.

25 Q. Why do you say that?

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1 A. Because that's what is used to mount the software on. You
2 typically mount it on a server and stick that server in your
3 data center and connect that to your infrastructure so that it
4 can prevent whatever it's supposed to be preventing or use it
5 for whatever it's supposed to be used for.

6 Q. Did you observe any evidence that these hardware -- the
7 sales of laptops and desktops and backpacks and mice were
8 inducing customers to buy software?

9 A. No. I basically assumed that it started off that way and
10 then it became a sort of a thing where you offered a discount
11 to the customers and the customer is buying stuff basically
12 because he was getting it cheaper than what he would get when
13 he bought it from Dell.

14 Q. Over time did you become concerned about the quantum of
15 hardware sales?

16 A. Yes.

17 Q. Why did you become concerned?

18 A. Because typically -- the initial idea was some of these
19 items, well, we let some of these customers buy some of these
20 items. We know they're not significant, it's -- from an
21 overall materiality standpoint, it's not material to the
22 financial statements as a whole. So that was the general
23 construct initially, okay? It's, yeah, it's not necessarily
24 hardware or software, but -- yeah, it's hardware, maybe it's
25 the other way, but it is not something that concerns or affects

1 the opinion of the financial statements as a whole.

2 Now, once the overall magnitude of the sales started
3 jumping to about -- if I remember correctly it was north of 20
4 million plus a quarter, gets you to about roughly over a
5 hundred million and if that is the case, then assuming that a
6 bunch of them are not necessarily in the realm of being
7 appliance-related stuff, then it gets you into this sort of
8 thing that you should be disclosing that separately in your
9 financial statements.

10 Overall revenue of Autonomy was roughly a billion at that
11 point in time, and so this was over the 10 percent level and
12 that becomes material at that point in time, so I was starting
13 to get concerned.

14 **Q.** From time to time would you review Autonomy's public
15 filings?

16 **A.** Yes, I did.

17 **Q.** Did you see any disclosures of hardware sales?

18 **A.** No.

19 **Q.** And did that concern you?

20 **A.** Yes, it did, but I was always told that IFRS was different
21 from US GAAP. My recollection of any kind of GAAP is that if
22 there is something significant, it needs to be disclosed, and
23 this wasn't. And my recollection of the financial statements
24 was there was only two lines there and there was only a
25 software line, so I'm assuming everything was done through the

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1 software.

2 **MR. LEACH:** Let me direct your attention to
3 Exhibit 1352, and I'll move it into evidence.

4 **THE COURT:** 1352 admitted.
5 (Trial Exhibit 1352 received in evidence)

6 **BY MR. LEACH:**

7 **Q.** I'm displaying to you, Mr. Vaidyanathan, what appears to
8 be Autonomy Corporation's annual report for December 31st,
9 2010. Do you see that?

10 **A.** Yes.

11 **Q.** Did you review documents like this from time to time?

12 **A.** Yes, I've seen these before.

13 **Q.** Okay. And what is the annual report? What is this?

14 **A.** So an annual report is the -- is two things, actually.
15 One is it has the financial statements for the year. It has an
16 auditor's report that is appended where the auditors opine on
17 the financial statements.

18 The other things that it contains also were the board of
19 directors' report on the financial statements plus all sorts of
20 other specific details that were required by the SEC equivalent
21 in the UK specifically regarding some communication or some
22 remuneration or things of that nature.

23 **Q.** Let me draw your attention, please, to page 6.

24 Do you see the heading "Chief Executive's Review"?

25 **A.** Yes.

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1 Q. And do you see an image of Dr. Lynch --

2 A. Yes.

3 Q. -- below that?

4 A. Yes.

5 Q. And if we could draw your attention to page 9.

6 Do you see a signature above the heading

7 "Dr. Michael R. Lynch, chief executive officer and cofounder"?

8 A. Yes.

9 Q. And if we could please look at page 14.

10 Do you see the heading "Business overview" at the top left
11 corner --

12 A. Yes.

13 Q. -- Mr. Vaidyanathan?

14 And is there a description here of Autonomy's business
15 model, the way it sells products?

16 A. Yes.

17 Q. Okay. I want to focus on the description of appliance
18 down at the bottom right corner.

19 A. Uh-huh.

20 Q. Do you see where it says, "Appliance. This is currently a
21 small part of Autonomy's business, focused on quick
22 time-to-value and high return. When customers have an urgent
23 need to deploy IDOL either for regulatory or commercial
24 imperatives we are able to provide a pre-installed license or
25 appropriate hardware to start generating an immediate return."

1 Do you see that language?

2 A. Yes.

3 Q. Is that what you observed with the sale of -- or the
4 resale of Dell laptops, desktops, mice, adapters and backpacks?

5 A. No.

6 Q. It then says, "The value of these solutions is
7 attributable almost entirely to the functions offered by the
8 license, so although there are some hardware costs involved,
9 the margin profile is not widely dissimilar to our traditional
10 license business." Do you see that?

11 A. Yes.

12 Q. What did you understand that to mean?

13 A. Well, the only way that makes sense is if you -- if you
14 combine the hardware portion and the software portion and then
15 you say that the overall sort of license -- margin profile on
16 that particular or those set of deals are not dramatically
17 different from the overall population of deals that were done
18 otherwise of appliances. That is the only way that makes
19 sense.

20 Q. Did that make sense to you?

21 A. No, it did not.

22 Q. Why didn't that make sense to you?

23 A. That's because the value of the hardware sales was
24 approaching over 10 percent. 10 percent is not something I
25 would characterize as small. In my sort of view of the world,

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1 anywhere between above 2 percent starts becoming meaningful.
2 Somewhere between 5 percent you've got to start looking at
3 whether you need to disclose it separately or not. Anything
4 above that you've got to figure out whether that makes a
5 difference to the readers of the financial statements. So
6 that's how I've always viewed numbers, and typically you go
7 back and look at the accounting guidance associated with this,
8 the stock -- guidance associated with -- the SEC guidance here
9 in the US associated with this and then make your determination
10 appropriately with the auditors.

11 **Q.** So inside Autonomy you understood because you were
12 reviewing some of the paperwork that the hardware sales
13 included laptops, desktops, monitors, mice, backpacks?

14 **A.** Yes.

15 **Q.** And from time to time you would review the -- you know,
16 the public-leaning statements about Autonomy's appliance
17 businesses. Did you view a disconnect there?

18 **A.** Yes. I did view it -- I mean this one is clearly a
19 disconnect. If you go and look at the financial statements
20 themselves, they don't have a separate line for hardware.

21 So my view was they -- at least in my mind I internalized
22 it as they must have gone and talked with the auditors, somehow
23 the auditors must have been fine with it. The auditors would
24 have caught this because it's above their materiality threshold
25 they would have certainly looked at it, so . . .

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1 Q. And was the laptops and the monitors that were being sold,
2 did Autonomy ever take physical possession of those?

3 A. No.

4 Q. And why was that significant to you?

5 A. Well, that flies completely against what is said here in
6 specific because it says it provides a pre-install license.
7 The license, if you pre-install it means that you would take
8 possession of the hardware. And if you said you would take
9 possession of the hardware, you would have expected some
10 inventory on your books because you can never sell everything
11 that you bought for on the same day.

12 And typically people if you don't manufacture it, it
13 doesn't make any sense to hold on to that inventory on your
14 books, so you would rather have it dropped shipped, which is
15 what Autonomy did. And if it was mice and backpacks like they
16 were selling, it made no sense to take that. It would just add
17 to logistical delays and you'll have more of a loss.

18 (Reporter seeks clarification.)

19 **THE WITNESS:** Logistical delays and you would add to
20 the potential loss on that transaction.

21 **BY MR. LEACH:**

22 Q. Let's do our best, Mr. Vaidyanathan, to speak slowly and
23 deliberately so everybody can hear you and understand you.
24 Again, thank you for your patience there.

25 In your own mind why did you have -- why did you think

1 Autonomy was selling Dell laptops?

2 **A.** So I thought initially when I looked at those transactions
3 and they were all software related, hardware related, that held
4 together in the sense that, you know, yes, you can actually
5 have hardware and software that was being sold separately, and
6 that would potentially, you know, be -- can be qualified as an
7 appliance eventually if the customers actually installed the
8 software onto the hardware.

9 Now, when you start selling mice and monitors and laptops
10 and desktops and things of that nature, then it becomes more of
11 a revenue sort of generating item than anything else. And
12 because we were selling that at a loss of anywhere between 8 to
13 14 percent -- there were stages -- roughly a 10 percent loss on
14 the overall sort of Dell contract, when you sell those items at
15 a loss, you have a revenue item that shows up in revenue
16 because of the sales of those items. You have a loss based on
17 that that needs to be accounted for because the hardware is
18 obviously expensive and it doesn't -- you are selling at a loss
19 clearly. So that loss needs to be accounted for as well and
20 that -- while it was generating revenue -- so it took the
21 pressure off the revenue portion -- it was creating pressure on
22 margins.

23 **Q.** When you say it was putting pressure on margins, what do
24 you mean?

25 **A.** So typically software companies back in the day with

1 traditional perpetual sale businesses, so perpetual use
2 software essentially saying that you sell -- it's a one-time
3 sale and after all you do is you sell maintenance to those
4 customers. That was the model back then for pretty much most
5 software companies around the world.

6 And there were new companies at that point in time like
7 Salesforce.com, that were trying on the Cloud -- they were
8 trying to move to the Cloud using a repetitive sort of sales
9 business, but it had not caught on back then.

10 The idea there was to -- when you talk about these sort of
11 sales -- so once you sell the initial sort of software product,
12 the only future revenue stream from those customers is the
13 maintenance renewal. There's nothing else. So if you
14 basically include hardware in your revenue, then it adds to
15 your revenue number, but that revenue number is not generating
16 the kind of profitability margins that a software sale actually
17 generates.

18 Because we did not use too much of externally developed
19 software or technology in our products, the overall sort of
20 expense for generating or producing software was low. So if
21 that is the case, then this would then -- if you include this
22 as software revenue, this would increase the revenue number but
23 it would decrease the profitability associated with the
24 software sale. So obviously that is what I meant when I --
25 when I mentioned that it would basically put pressure on the

1 margins.

2 Q. At some point in time did you learn that Autonomy was
3 recording some of the cost relating to the hardware not in
4 gross profit but in sales and marketing?

5 A. Yes.

6 Q. Did that cause you concern?

7 A. Yes.

8 Q. Why?

9 A. Typically when you sell hardware or when you say sell
10 software, costs associated directly with selling the hardware
11 or the software needs to be recorded against that item in cost
12 of goods sold, so it would impact gross margin.

13 In this potential case, from a Dell hardware standpoint,
14 we were told not to book it to the close -- cost of goods sold
15 line.

16 Q. Who told you that?

17 A. Lisa Haas.

18 Q. Does she work for Mr. Chamberlain?

19 A. Yes.

20 Q. Did you view it as deceptive in any way to put the
21 hardware costs in sales and marketing?

22 A. Yes.

23 Q. Did you also have conversations with Mr. Chamberlain
24 whether the hardware revenue should be reported at a gross
25 amount or a net amount?

1 A. Yes.

2 Q. Okay. And what does that mean?

3 A. So the gross versus net concept applies to almost every
4 sort of accounting level across jurisdictions, so typically the
5 idea is to check whether you are selling the goods or services
6 as a principal or as an agent. So if you sell it as a
7 principal, then you can clearly record it as a sale; there's no
8 issues. If you record it as an agent, then you've got to
9 figure out whether you added any more value to that particular
10 thing. Does the customer view you as the person you're selling
11 it from, whether -- controlled paths. There are a few tests
12 that you apply. And presuming that you pass those tests, then
13 can you either classify it as gross, which means you can take
14 the net total revenue and the cost to the cost line, so putting
15 both sides on financial statements.

16 In other circumstances where you do not pass this test,
17 what you would do is, you would net the two, essentially saying
18 you have \$10 of sale from revenue and you got, let's say, \$9
19 for purchases; you would net the two, and you will show 1 on
20 your income statement.

21 Q. And you had conversations with Mr. Chamberlain about this?

22 A. Yes.

23 Q. Because you had concerns about Autonomy recording it at
24 the net -- or the gross rather than the net?

25 A. Yes.

1 **MR. SEILIE:** Objection, foundation.

2 **THE COURT:** Overruled.

3 **BY MR. LEACH:**

4 **Q.** And what did Mr. Chamberlain say to you?

5 **MR. SEILIE:** Objection, foundation as to time and
6 place, Your Honor. We don't know when this conversation has
7 happened.

8 **THE COURT:** Okay. Can you lay a foundation as to the
9 approximate date? Sustained.

10 **BY MR. LEACH:**

11 **Q.** During the period -- during the period 2010 did you have
12 conversations with Mr. Chamberlain about this?

13 **A.** Yes.

14 **Q.** And what did he say?

15 **MR. SEILIE:** Still vague, Your Honor.

16 **THE COURT:** Well, I don't know how vague it is. Can
17 you identify when in 2010 he had these conversations or not?

18 **BY MR. LEACH:**

19 **Q.** Sitting here today, Mr. Vaidyanathan, do you know the
20 specific date and time when you had this conversation?

21 **A.** I can't give you a specific date for certain. I think
22 it's in the second half 2010.

23 **Q.** Second half of 2010?

24 **A.** Yes.

25 **Q.** And you have clear memory of this conversation with

1 Mr. Chamberlain?

2 **A.** We've had several conversations on this topic, so . . .

3 **Q.** Okay. What did he say?

4 **A.** Well, the concept was --

5 **MR. SEILIE:** Same objection, Your Honor. There's
6 no --

7 **THE COURT:** Yeah. Overruled. Go ahead.

8 **THE WITNESS:** So the idea here was to understand from
9 him, hey, I'm missing something, can we be very clear as to
10 exactly how we got around this just so that my knowledge gets
11 provided.

12 And he said, well, we've gone through this entire detail
13 with auditors along with a bunch of facts are associated with
14 this at the corporate level, and so we are -- we got
15 comfortable that it should be close.

16 **BY MR. LEACH:**

17 **Q.** Did he say, in words or substance, that you should back
18 off?

19 **A.** He didn't say it that way but that's -- that's what I
20 thought. I mean, when he said that, well, it's all been
21 discussed with the auditors, there's no point in discussing it,
22 so . . .

23 **Q.** Let me move forward in time, Mr. Vaidyanathan, to the end
24 of 2010, and I want to ask you some questions about a company
25 called VMS or Video Monitoring Systems. Is that a company you

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1 became familiar with at your time at Autonomy?

2 **A.** Yes.

3 **MR. LEACH:** Let me draw your attention and I'll move
4 into evidence Exhibit 15575.

5 **THE COURT:** One -- I'm sorry?

6 **MR. LEACH:** 15575.

7 **THE COURT:** 15575 admitted.

8 (Trial Exhibit 15575 received in evidence)

9 **MR. LEACH:** And if we could start, Mr. Hasan, down at
10 the bottom half of the email.

11 **BY MR. LEACH:**

12 **Q.** Mr. Vaidyanathan, do you see an email from you dated
13 Friday, December 31st, 2010, with the subject "FA register"?

14 **A.** Yes.

15 **Q.** What does "FA register" refer to?

16 **A.** "FA" refers to fixed assets.

17 **Q.** What are fixed assets?

18 **A.** So fixed assets are assets -- or items that a company
19 acquires and puts them on the balance sheet with the intent of
20 using them for periods greater than one year. And the intent
21 is that you've got to basically establish a useful life. Based
22 on the useful life the asset is then amortized over the useful
23 life, typically over three years or five years.

24 **Q.** So the monitor you're looking at, the computers that the
25 Court is using, would those be fixed assets of the Court?

1 A. Yes.

2 Q. Okay. And this -- you were writing here "Chris Goodfellow
3 urgently needs to look at the FA register." Was Mr. Goodfellow
4 somebody who worked in the UK in tech?

5 A. That's my recollection.

6 Q. Okay.

7 A. I believe that.

8 Q. And Huaimin Ding, who was that?

9 A. So Huaimin was the deal accountant at Zantaz in the US,
10 and Zantaz is a group company of Autonomy in the US and she
11 used to work for me.

12 MR. LEACH: Okay. And if we could look briefly at the
13 top, Mr. Hasan.

14 BY MR. LEACH:

15 Q. Huaimin Ding writes back to you on the last day of 2010
16 with a copy to Mr. Chamberlain "Please see attached for Zantaz
17 US fixed asset listing in FA register as of today. Let me know
18 if you have any questions." Do you see that?

19 A. Yes.

20 MR. LEACH: Okay. And I'd like to look briefly at the
21 attachment, the Excel file, very briefly. And if we could just
22 zoom in to the top portion with the header, please. Thank you,
23 Mr. Hasan.

24 BY MR. LEACH:

25 Q. Do you see the heading Autonomy Zantaz US No. 2?

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1 A. Yep.

2 Q. And it says "Asset Listing Report"?

3 A. Uh-huh.

4 Q. And in column E there's a description for "Dell tape drive
5 LTO"?

6 A. Yes.

7 Q. And then there's a location column in F. Do you see that?

8 A. Yes, sir.

9 Q. And do you see the abbreviations "PLS"?

10 A. Yes.

11 Q. Is that Pleasanton?

12 A. Yes.

13 Q. Beneath that it's "LV." Is that Las Vegas?

14 A. That's correct.

15 Q. And then further down there's "SAC." Is that Sacramento?

16 A. Yes.

17 Q. And is this essentially a listing of all of the computers
18 that Autonomy is using in Zantaz in order to run its Zantaz
19 business?

20 A. That's correct.

21 Q. Okay. So the DigitalSafe that you talked about yesterday,
22 this is computers and equipment that are being used to maintain
23 those DigitalSafes on behalf of banks?

24 A. Yes. So this would contain not only that, it would
25 contain pretty much everything else that was not necessary to

1 run just DigitalSafe, so anything that Zantaz, the company,
2 acquired to basically run its financial statements or to run
3 its business, so essentially could include furniture and
4 fixtures and other stuff as well, but this was primarily the
5 equipment.

6 **Q.** And is this all used equipment? I mean, it's being used
7 by Autonomy at the time?

8 **A.** Yes. It's all used.

9 **Q.** Okay. And did you develop an understanding of why you
10 were being asked to provide a list of fixed assets to Chris
11 Goodfellow and Steve Chamberlain?

12 **A.** At that point in time I don't think I knew.

13 **Q.** Okay. Did you come to understand it?

14 **A.** Subsequently, after a few contracts, yes, I understood
15 exactly why.

16 **Q.** And what were you asked to do?

17 **A.** Well, I was -- we were only asked to provide a listing.
18 That was all we were asked to do. I don't think we were asked
19 to do anything else on this specific topic.

20 **MR. LEACH:** Okay. Let's look at Exhibit -- and I'll
21 move into evidence -- 1428.

22 **THE COURT:** 1428 admitted.

23 (Trial Exhibit 1428 received in evidence)

24 **MR. LEACH:** And if we could zoom into the top,
25 Mr. Hasan, with the header and the attachments.

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1 That's good.

2 **BY MR. LEACH:**

3 **Q.** Do you recognize this document, Mr. Vaidyanathan?

4 **A.** Yes.

5 **Q.** Okay. And is this an email from you to Steve Chamberlain
6 and Matt Stephan dated January 6, 2011?

7 **A.** Yes.

8 **Q.** Do you see the subject "VMS invoice"?

9 **A.** Yes.

10 **Q.** And there's a number of attachments. I want to start to
11 get you oriented with the one fourth from the bottom, "VMS
12 Second Amend to Software License." Do you see that?

13 **A.** Yes.

14 **MR. LEACH:** And if we could go, please, to page 7.

15 **BY MR. LEACH:**

16 **Q.** Is this the attachment, Mr. Vaidyanathan?

17 **A.** Looks like it.

18 **Q.** Okay. And do you see the heading "Second software license
19 agreement"?

20 **A.** Yes.

21 **MR. LEACH:** If you could zoom in to the top half,
22 Mr. Hasan.

23 Down a little bit more. That's good. Thank you.

24 **BY MR. LEACH:**

25 **Q.** And do you see the -- do you see the date -- effective

1 date of December 31st, 2010?

2 **A.** Yes.

3 **Q.** And in paragraph 2 it says, "Hardware. By execution below
4 VMS unconditionally and irrevocably agrees to purchase from
5 Autonomy and Autonomy agrees to sell to VMS the hardware and
6 other equipment identified in the schedule attached to the
7 second amendment." Do you see that?

8 **A.** Yes.

9 **Q.** And in this time period did you come to understand that
10 Autonomy was selling hardware to VMS?

11 **A.** Yes.

12 **MR. LEACH:** Okay. Let's look at the next page,
13 page 8, please. And if we could zoom in on paragraph 3 all the
14 way down -- little bit more so we capture the rows.

15 Thank you, Mr. Hasan.

16 **BY MR. LEACH:**

17 **Q.** Do you see in paragraph 3 where it says, "Purchase price,
18 VMS shall pay to Autonomy the sum of 6,004,066 and 90/100th in
19 United States dollars." Do you see that?

20 **A.** Yes.

21 **Q.** So \$6.4 million?

22 **A.** Uh-huh.

23 **Q.** And you see a payment schedule where there are various
24 installments over a period of time?

25 **A.** Right.

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1 **MR. LEACH:** Okay. And let's go to page 9, please,
2 Mr. Hasan. And if we could zoom in on the top half. That's
3 great.

4 **BY MR. LEACH:**

5 **Q.** Is this a list of the hardware that you understood VMS was
6 purchasing?

7 **A.** Yes.

8 **Q.** Okay. Do you see where it says "Type 1 Server (quantity
9 purchased 1,361)"?

10 **A.** Yes.

11 **Q.** Did this indicate to you that VMS was purchasing 1,361
12 Type 1 servers?

13 **A.** Yes.

14 **Q.** And each of those Type 1 servers was to include the
15 product listed below, including 1HP and then there's a number.
16 Do you see that?

17 **A.** Yes.

18 **Q.** Okay. And further below it says "Type 3 servers,
19 (quantity purchased 227)." Do you see that?

20 **A.** Yes.

21 **Q.** And each of those 227 Type 3 servers were to include some
22 additional product as listed there. Was that what your
23 understanding was?

24 **A.** Yes.

25 **Q.** Okay. So VMS was purchasing 6 million of hardware listed

1 there. Was that your understanding, based on this agreement?

2 A. Yes.

3 MR. LEACH: Okay. Let's go back to page 1, Mr. Hasan.

4 BY MR. LEACH:

5 Q. And I want to focus on what you wrote to Mr. Chamberlain.

6 You wrote "Hi Steve, Matt. I just caught something while
7 trying to ensure that we book the cost of hardware revenue for
8 the revenue taken." Do you see that?

9 A. Yes.

10 Q. And what did you mean by that?

11 A. So I was just trying to make sure that the -- when you
12 book the revenue, I was trying to make sure the costs got
13 booked as well because it was a sizeable purchase, and I just
14 want to make sure the costs are booked.

15 Q. And the costs of the revenue would be --

16 A. In cost of revenue, yes.

17 Q. -- cost of all the hardware we just saw in the agreement?

18 A. Yes.

19 Q. Okay. Down at the bottom you wrote "For the VMS contract,
20 it seems that we have a purchase order of approx GBP" -- is
21 that pounds?

22 A. Yes.

23 Q. -- "1.8M" -- is that 1.8 million?

24 A. That's correct.

25 Q. -- "issued out of the UK."

1 A. Uh-huh.

2 Q. What did you mean by that?

3 A. So typically you would not -- we didn't manufacture the
4 hardware, so if you are selling hardware you would have to get
5 the hardware from someplace. So my assumption was that it
6 would have been backed by purchase orders with Windows who made
7 the hardware. So my point was, yes, I found out that there was
8 a purchase order of 1.8 billion -- 1.8 million British Pounds
9 in the UK, so part of that was already taken care of. So I
10 just wanted to make sure that the balance was recorded
11 correctly.

12 Q. And in your mind the balance was to be recorded from fixed
13 assets that Autonomy had, used hardware in its own facilities?

14 A. No.

15 Q. No? What was it to be covered from?

16 A. My assumption was because we didn't manufacture hardware,
17 we would basically be buying hardware from someplace and giving
18 it. I was expecting a Dell order worth the difference to be
19 based out of the US.

20 Q. Okay. Did you come to learn that there was no additional
21 order to cover the hardware costs?

22 A. Yeah, because I didn't see it in the Dell purchase orders,
23 so I didn't see one, and so that led to the question and I just
24 wanted to make sure that we captured the cost.

25 Q. Okay. And there's some additional attachments to -- well,

1 let me first look at the -- you reference a --

2 **MR. LEACH:** If we could go to page 2, Mr. Hasan, and
3 that paragraph at the top.

4 **BY MR. LEACH:**

5 **Q.** You wrote, "The other issue that I noted seems to be that
6 the PO that we raised to Insight UK doesn't seem to cover all
7 items in appendix to the contract amendment." What did you
8 mean by that?

9 **A.** So it's pretty much what we -- we just talked about. The
10 overall number was about 6 million, thereabouts.

11 My understanding was, we had 1.8 million GDP or the UK, so
12 I was looking; roughly that's give or take 2 million in US.
13 The question was for the balance and it said we have some items
14 in stock, so it was just kind of odd.

15 **Q.** What do you mean it was kind of odd?

16 **A.** We have never sold -- we don't sell used items to
17 customers. We sell new equipment to customers. Nobody will
18 buy used equipment unless they're absolutely desperate.

19 **MR. LEACH:** Let me look briefly at the PO. If we
20 could go to page 27, Mr. Hasan.

21 **BY MR. LEACH:**

22 **Q.** Is this the purchase order for the 1.8 million Pounds of
23 new hardware that you were referring to?

24 **A.** Yes.

25 **Q.** And there's a description for Type 1 servers. Do you see

1 that?

2 A. Yes.

3 Q. And the quantity is -- for at least some of them is 390.

4 Do you see that?

5 A. Yes.

6 Q. Was part of the issue you were wrestling with here is
7 we've bought some hardware from Insight to resell to VMS,
8 where's the remainder going to come from and how are we going
9 to book those costs?

10 A. Yes, that was the question.

11 And secondly, this wasn't -- it wasn't very clear to me
12 how many Type 1 servers these were. There's a whole bunch of
13 components here.

14 The agreement referred to a specific number of servers.
15 This looked like it's part of the order, it doesn't look as
16 though -- because I couldn't tell how many chassis you need to
17 build one server, so it's very difficult with the information
18 on this to tell how many you can actually make out of this.

19 Q. And is that the issue you were escalating to
20 Mr. Chamberlain?

21 A. So yes. So one is that. The second was, okay, you've
22 got -- you've got this, where's the balance coming from. I
23 don't know how many these are, so where's the balance coming
24 from.

25 Q. Okay. Let's look at page 16. Do you see the email from

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1 Chris Goodfellow to Richard Eads with the subject "Stock for
2 VMS"?

3 A. Yes.

4 Q. And Richard Eads, was he a colleague of yours in finance?

5 A. Yes.

6 Q. Did he work in eTalk?

7 A. Yes. He was controller for eTalk --

8 Q. Okay.

9 A. -- and head of procurement for the Autonomy Group in the
10 US.

11 Q. Okay. And you see where Mr. -- and stock, is that a
12 reference to fixed assets?

13 A. Well, at that time I didn't know, but it appears to be so.

14 Q. Okay. And Mr. Goodfellow is writing "956 servers plus
15 3SAN's in stock.xlsx." Do you see that?

16 A. Yes.

17 Q. And if we go to page 12, do you see a further listing of
18 stock for VMS with locations in Sacramento, and various serial
19 numbers?

20 A. Yes.

21 Q. And because these were attached to the email, did you
22 understand that these servers were going to be used to satisfy
23 the VMS purchase?

24 A. Yes.

25 Q. Did that seem odd to you?

1 A. Yes.

2 Q. Why was that odd to you?

3 A. Because, typically, you don't sell fixed assets to
4 customers to satisfy an order. You would generally keep -- you
5 would sell stock, so stock as an inventory. So you would
6 buy -- which is why I was expecting a purchase order, right? I
7 didn't expect to use what we already have.

8 So this seemed as though either we had just bought those
9 and we had just capitalized them and therefore we would not
10 theoretically be using them, therefore we were using those
11 for -- to satisfy the order instead of buying new. That is the
12 only -- only explanation I could think of, but logically --
13 typically if you're going to sell fixed assets and you're doing
14 that, that should not be from a fixed asset standpoint, it
15 should be inventory.

16 Q. Did you ever see any evidence that these servers that
17 Autonomy was using for its own purposes in Sacramento and
18 Pleasanton and Las Vegas were actually delivered to VMS?

19 A. No, I did not see.

20 Q. Okay. Did you ever see any evidence that these servers
21 that were being used by Autonomy were, you know, somehow
22 cordoned off and stopped being used so that VMS could use them
23 some day?

24 A. No.

25 Q. Okay. Did you see anything that suggests to you that

1 these servers that would make up the balance of this order were
2 actually sent to VMS?

3 **A.** No. Also, I did not know whether these fully satisfied
4 the order.

5 **Q.** Okay. Moving forward and -- was that odd to you?

6 **A.** Yes.

7 **Q.** Why was that odd to you?

8 **A.** For two reasons. One, if you are -- if you are taking
9 revenue for that particular order because you're developing
10 hardware, the idea would be to take revenue, and if you are
11 taking revenue, then you should book the cost. If you book --
12 for you to book the cost, because you don't manufacture the
13 hardware, you needed to do two things. One, you needed to get
14 the hardware from someplace else and drop ship it on the same
15 day. If that wasn't done, then potentially the sale also
16 couldn't be recorded. If you bought it from somewhere, then
17 that cost should be recorded on the books as a cost of sale.

18 Second, it should be -- you should have -- if you're
19 doing -- if you are selling part of fixed assets to sort out
20 the order, then you should declassify those fixed assets from
21 fixed assets and record the amount as a inventory cost-of-sales
22 item.

23 **Q.** Did you ever get a satisfactory answer to your questions
24 from Mr. Chamberlain?

25 **A.** No.

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1 Q. Okay. At this point in time were you reluctant to ask
2 questions?

3 A. Yes.

4 Q. Why were you reluctant?

5 A. Well, we had -- by then I had known that -- you know,
6 Brent had actually asked the questions of the -- of our
7 committee to the management in the UK. I also knew that he had
8 told us that he was going to the SEC in the US, he was also
9 going to the SFO -- the Serious Fraud Office in the UK. I knew
10 he was going there. I didn't know whether he went or not
11 but -- and the -- subsequently -- obviously nothing happened.

12 We were told that Deloitte went through all of that, they
13 found that everything was in order and then at that point in
14 time my assumption was, well, there must be something more that
15 I don't know that clearly other people have looked at and
16 they've found it satisfactory. Clearly I'm in the -- I don't
17 have all the information that is needed to process this piece
18 of -- this transaction.

19 Q. Moving forward in time after the HP acquisition is
20 announced but before it's closed, did you write off any amounts
21 relating to VMS?

22 A. Yes.

23 Q. What did you do?

24 A. We were asked to write off the entire amount that was due
25 from VMS. There was a bunch of -- bunch of items that we were

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1 asked to write off.

2 Q. The entire amount that was owed for the hardware?

3 A. I think it was -- if I remember correctly -- I'm going off
4 memory here -- I think it was roughly \$10 million.

5 THE COURT: I'm sorry, what did you say?

6 THE WITNESS: It was 10 million.

7 BY MR. LEACH:

8 Q. I want to ask you a few questions about the first quarter
9 of 2011 and the second quarter of 2011. And if I could draw
10 your attention to Exhibit 15704, which I'd move into evidence.

11 THE COURT: 15704 admitted.

12 (Trial Exhibit 15704 received in evidence)

13 BY MR. LEACH:

14 Q. Do you recognize this, Mr. Vaidyanathan?

15 A. Yes.

16 Q. What is this?

17 A. So this was an email from Steve talking about two deals --
18 that we are reselling FileTek software for those two customers.

19 Q. So Mr. Chamberlain -- and the date of this email is March
20 31st, 2011. Do you see that?

21 MR. LEACH: And if we could zoom in, Mr. Hasan, to the
22 top.

23 BY MR. LEACH:

24 Q. Is that the last day of Autonomy's first quarter of 2011?

25 A. Yes.

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1 Q. Okay. And Mr. Chamberlain writes to you, "Ganesh, as part
2 of the deals with Morgan Stanley and HP, we are reselling
3 FileTek software. Our own license is for internal use, and so
4 we are (reluctantly) having to pay a resale fee." Do you see
5 that language?

6 A. Yes.

7 Q. And it goes on "We have paid for the HP piece from the
8 UK -- needed to be with FileTek opening of business day -- and
9 MS can only be paid once we get our deal. Basically, we will
10 not execute until we have our deal." Do you see that language?

11 A. Yes.

12 Q. And do you know why Mr. Chamberlain was sending this to
13 you?

14 A. Because we needed to basically pay FileTek that particular
15 day.

16 Q. Was this arrangement odd to you?

17 A. Yes. I don't think until then we had resold other
18 people's software. We had other people selling our software.
19 This was the first I had heard of us reselling somebody else's
20 software.

21 Q. What do you mean by that, that was the first time you
22 heard of this?

23 A. So typically when software companies sell products, they
24 sell through either the direct channel or through resellers.
25 So direct channel you're in that -- the salesperson will then

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1 go to the customer, broker the sale directly, and that will
2 come to the company.

3 When you go through a reseller, the reseller basically
4 contacts the customer, ensures that he or the reseller is in
5 areas where direct sales channels can't reach, and that's why
6 you expand your reach with resellers.

7 There also you have the third-party coming in and the
8 contact will be three-way sort of discussions and eventually
9 the deal gets consummated. So that was what I was familiar
10 with from a standpoint of Autonomy. We were using both of
11 those channels to expand our footprint, so we were having
12 resellers sell our software, we were having -- selling directly
13 as well. We were not reselling somebody else's software. That
14 was not my recollection.

15 **Q.** And was there anything about the timing of this that
16 caused concerns in your mind?

17 **A.** I mean, typically last day of the quarter, again, if you
18 are selling -- reselling software, nobody would have a
19 transaction on the last day of the quarter with immediate pay
20 terms. Typically, you would have payment terms, say, net 30 or
21 whatever, that would happen, but I've not seen typically
22 customers come in and say you resell my software, I need you to
23 pay right away and that needs to be resold to a third-party
24 customer, so it was hard.

25 Typically in the Autonomy world I've seen large contracts

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1 come in during the last day or last two days of the quarter;
2 not unusual for a software company, but the resellers typically
3 you would see some of these being talked about much before, not
4 typically on the last day.

5 **Q.** And if I'm understanding you correctly, the fact that
6 payment was due on March 31st, that was different from other
7 software selling arrangements that you were familiar with?

8 **A.** Correct.

9 **Q.** Okay. Did you develop concerns in your own mind that
10 Autonomy was paying FileTek so FileTek could pay Autonomy?

11 **A.** So we've had all these deals with FileTek. Anyway there
12 was a lot of buy transactions, there were sell transactions,
13 this -- and FileTek was one of the vendors that I had brought
14 up in mid-2010, so it looked like another of those
15 transactions, but I couldn't tell -- I couldn't tell why we
16 were reselling FileTek software.

17 FileTek is not, as far as I know at that point in time,
18 not a huge sort of software vendor that vendors like Morgan
19 Stanley and HP would use. They would, more likely than not,
20 buy Autonomy software. They would buy a DigitalSafe, they
21 would buy other things, but I'm not necessarily sure that they
22 would understand what a FileTek software was being used for.
23 And for us to resell that software seemed odd. As I said, we
24 had not done this before, so it appeared to me that this was,
25 you know, one more of those transactions with FileTek which I

1 don't have a complete grip on.

2 **Q.** And did you -- and is part of that because that
3 responsibility had been taken away from you?

4 **A.** Yeah. I couldn't see the other side of the transaction at
5 all.

6 **Q.** But did you develop concerns that what you had observed in
7 2010 was happening further in 2011?

8 **MR. SEILIE:** Objection, leading.

9 **THE COURT:** Overruled.

10 **THE WITNESS:** My worry because of my 2010 experience
11 was -- and because we are selling to the same sort of reseller
12 with potential circular sort of transaction, I was a little
13 worried.

14 **BY MR. LEACH:**

15 **Q.** At this point in time were you worried about maintaining
16 your employment?

17 **A.** Yes. As I said, I came into the US in 2008 and as we all
18 know, 2008 wasn't a great time to immigrate to the US. We had
19 the worst recession in recent memory. That didn't go really
20 well.

21 I recruited my family from India and I pretty much sold
22 everything in India and I had come to the US and within three
23 months of that the economy went south, Interwoven was in sale
24 proceedings, we got eventually bought out in 2009, and in 2010
25 this event happened with Brent and a few others getting fired.

1 My -- I could not legally work in the country if I didn't have
2 a permit. I was -- my Green Card was in the process of being
3 processed, you know. If I had to go back to India at that
4 point in time, it would have been a terrible financial blow to
5 me and the family, so it was -- it was concerning.

6 Q. Did you work with Matt Stephan at all?

7 A. Yes.

8 Q. Who is Mr. Stephan?

9 A. Mr. Stephan was based out of the UK. He was responsible
10 for revenue, if I recall, back in -- he was based out of the
11 UK, and he was responsible for the Autonomy's revenue
12 recognition. He and another lady, I think Poppy Prentis, both
13 of them were involved in A, revenue; and B, other corporate
14 matters relating to the US.

15 Q. We saw Mr. Stephan on the VMS email from the end of 2010.
16 Do you have -- do you know if he left Autonomy at some point?

17 A. Yes, he did.

18 Q. Do you have any information why?

19 MR. HEBERLIG: Objection, Your Honor.

20 THE COURT: Sustained.

21 BY MR. LEACH:

22 Q. Did have you conversations with Mr. Stephan about his
23 experience in the UK?

24 MR. HEBERLIG: Objection, Your Honor.

25 MR. SEILIE: Objection.

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1 **MR. HEBERLIG:** Same objection.

2 **THE COURT:** Well, I'm going to admit it because it's
3 not coming in for the truth of the matter but, rather, this
4 witness's state of mind.

5 **MR. SEILIE:** Objection as to foundation and to time of
6 these conversations and place, Your Honor.

7 **THE COURT:** Okay. Can you . . .

8 **BY MR. LEACH:**

9 **Q.** Do you know when Mr. Stephan left, Mr. Vaidyanathan, his
10 reasons for leaving Autonomy?

11 **A.** Oh, Yes, I did. I was -- I was -- I thought he was a good
12 sort of accountant with a strong head on his shoulders in terms
13 of understanding the nuances of accounting pretty well, so --
14 and I got along pretty well with him, so I asked him why he was
15 leaving, and he said that he was leaving because, A, he wanted
16 to get back to Australia -- he was Australian -- and second, he
17 said that, well, with all that's going on, I'm better out of
18 here than in here.

19 **Q.** And was that something that weighed on your mind in terms
20 of staying at Autonomy?

21 **A.** Yes. Again, if I could have left, assuming my permit
22 situation was sorted out and the economy was slightly better,
23 then I would have left right then because at that point in time
24 nobody could -- nobody in the US was hiring employees who
25 needed some sort of a visa or a visa backup or employee permit.

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1 Q. Let me move forward to the time of the second quarter of
2 2011.

3 THE COURT: I think maybe we'll take a recess now.

4 MR. LEACH: Great.

5 THE COURT: Ladies and gentlemen, we're going to be in
6 recess until 5 minutes to 11:00. Remember the admonition given
7 to you. Do not discuss the case, allow anyone to discuss it
8 with you, form or express any opinion.

9 (Recess taken at 10:39 a.m.)

10 (Proceedings resumed at 10:57 a.m.)

11 (Jurors enter courtroom.)

12 THE COURT: Okay. Please let the record reflect all
13 jurors are present, the parties are present. You may proceed.

14 MR. LEACH: Thank you, Your Honor.

15 BY MR. LEACH:

16 Q. Mr. Vaidyanathan, we were on the second quarter of 2011,
17 the last quarter before the HP acquisition, and I wanted to
18 draw your attention to Exhibit 11934, move it into evidence.

19 THE COURT: 11934 admitted.

20 (Trial Exhibit 11934 received in evidence)

21 MR. LEACH: And Mr. Hasan, if we could please zoom in
22 on the top half.

23 BY MR. LEACH:

24 Q. Is this an email from Steve Chamberlain to you with a copy
25 to Lisa Harris?

1 A. Yes.

2 Q. And what was Lisa Harris's role in the -- in the UK?

3 A. She was group accountant, group chief accountant if I
4 remember correctly, and she was responsible for the overall
5 financial statements.

6 Q. From time to time would she make comments to you about
7 meeting EPS figures?

8 A. Yes.

9 Q. What did she say?

10 A. She would gently say that we need to get to a particular
11 EPS number that Shushovan had in mind and that was the -- that
12 was the goal. And she would make references to certain things
13 that we have to do to get there.

14 Q. Did -- at times did those seem results oriented to you?

15 A. Yes.

16 Q. On this occasion, June 30th, 2011, Mr. Chamberlain is
17 writing relating to something called DiscoverTech. Were you
18 familiar with something called DiscoverTech?

19 A. Yes.

20 Q. Was that another one of the resellers we've been
21 discussing?

22 A. Yes.

23 Q. This says, "Need to process payment of 4.4M today.
24 Attached are the relevant docs and approvals. Again, once I
25 have executed agreement and invoice, I will forward for

1 processing." Was this Mr. Chamberlain directing you to prepare
2 for a \$4.4 million payment to DiscoverTech?

3 A. Yes.

4 Q. And did you have similar concerns about this payment that
5 you had to the FileTek transaction from the previous quarter?

6 A. Typically with resellers after 2010 I looked at pretty
7 much most of them with a greater degree of caution, didn't know
8 exactly what this was all about at that point in time, but
9 yeah. If it relates to a deal towards the last day of the
10 quarter or so, it was something to worry about in my mind.

11 Q. Was there something about the payment being made on the
12 last day of the quarter for software that weighed in your mind?

13 A. Yes. I mean, typically, again, if you're trying to do a
14 deal with a reseller, you would not necessarily have to pay the
15 amount right away and didn't understand why we were paying
16 something to a reseller. Typically they buy stuff from you, so
17 it would be the other way around, but it seemed odd.

18 Q. It seemed odd to you?

19 A. Yeah.

20 Q. All right. Let me draw your attention to page 7.

21 MR. LEACH: I'm sorry. Page 3, Mr. Hasan.

22 BY MR. LEACH:

23 Q. Do you see the heading "Software Distributor Agreement"?

24 A. Yes.

25 Q. And this appears to be an agreement or a draft agreement

1 between Autonomy and Discover Technologies?

2 A. Yes.

3 Q. And in your experience was it usual for Autonomy to
4 purchase software to resell to others?

5 A. We did not.

6 Q. You did not do that?

7 A. We did not do that and my -- the last time we did that was
8 the FileTek thing we just talked about. Again, this was odd.

9 Q. This was odd?

10 A. This was odd.

11 Q. Okay. If I could draw your attention to page 13.

12 MR. LEACH: And if we could zoom in on the top half
13 down to Mr. Chamberlain's signature or signature block.

14 BY MR. LEACH:

15 Q. Do you see an email from Steve Chamberlain dated June
16 30th, 2010, to Mike Lynch, Shushovan Hussain with a copy to
17 Joel Scott and Andrew Kanter?

18 A. Yes.

19 Q. Who is Mr. Kanter?

20 A. He was the CTO -- COO, sorry. He was the COO, chief
21 Operating Officer of Autonomy.

22 Q. Was he also a lawyer?

23 A. Yes, he was.

24 Q. And Mr. Chamberlain wrote "Both-need your approval to
25 proceed on this." Do you see that?

1 A. Yes.

2 Q. And at the top do you see where Mr. Hussain responds with
3 a copy to Steve Chamberlain and Mike Lynch "Based on
4 discussions with stoufer and the resale value on a number of
5 our strategic accounts I am ok." Do you see that?

6 A. Yes.

7 Q. And did you take that as approval that you could make this
8 \$4.4 million payment to DiscoverTech?

9 A. Yes. It appears as though they were okay with the overall
10 reseller agreement with DiscoverTech.

11 Q. Are there particular levels within Autonomy that,
12 Mr. Hussain and Dr. Lynch needed to approve?

13 A. If I recall correctly, everybody in the US had approval
14 limits of about \$250.

15 Q. I'm sorry, \$250?

16 A. Yes.

17 Q. That was the most you could spend --

18 A. Yes.

19 Q. -- in the US?

20 A. Yes.

21 Q. Okay.

22 A. Without approval. Anything above that required approval.

23 And I think Steve's approval limit was, I think, \$10,000.

24 Anything above that required approvals from Shushovan, Andy and
25 Mike.

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1 Q. Let me draw your attention to Exhibit 1900, 1900.

2 MR. LEACH: I move it into evidence.

3 THE COURT: 1900 admitted.

4 (Trial Exhibit 1900 received in evidence)

5 BY MR. LEACH:

6 Q. Mr. Vaidyanathan, is this an email from you to Steve
7 Chamberlain and Joel Scott dated June 30th, 2011?

8 A. Yes.

9 Q. And does this also relate to DiscoverTech and the
10 \$4.4 million payment we saw in the prior exhibit?

11 A. Yes.

12 Q. You wrote "Hi Steve, here you go. We wired 4.4M and did
13 not take the 1% early payment discount that Exhibit A states."
14 What did you mean by that?

15 A. So there's no reason to pay a reseller or anyone in
16 advance unless they give you some sort of a discount for early
17 payment and the agreement specifically called for that.
18 Because the approval was to pay 4.4 million, we wired the
19 4.4 million; we didn't take the 1 percent discount.

20 And to me 1 percent of 4.4 million was sizable enough
21 given the amounts that we were looking at from a materiality
22 standpoint at least from the US standpoint that was sizeable,
23 and so my mind here was to take the discount, take the discount
24 if we potentially could.

25 Q. So you paid the \$4.4 million --

1 A. Yes.

2 Q. -- because Mr. Chamberlain directed you to do that?

3 A. Correct.

4 Q. And you did not take advantage of this early payment
5 discount. What did that convey to you?

6 A. Well, there are only two reasons why that could have
7 happened. One is because of the paucity of time people miss
8 the 1 percent early payment threshold; that's one possibility.
9 The other possibility was we had basically negotiated a
10 \$4.4 million deal, the 1 percent was just stated there and
11 there might have been discussions around the agreement and not
12 necessarily documented in the agreement that necessitated the
13 payment of the 4.4 million.

14 Q. And was this your effort to maybe get some money back for
15 Autonomy?

16 A. Yes.

17 Q. Do you know if that ever happened?

18 A. No, it didn't happen.

19 MR. LEACH: Let's go to 1916. I'll move that into
20 evidence.

21 THE COURT: 1916 admitted.

22 (Trial Exhibit 1916 received in evidence)

23 BY MR. LEACH:

24 Q. And Mr. Hasan, if we could move into the top half down to
25 Mr. Chamberlain's signature block. Is this another email from

1 Mr. Chamberlain to you with a copy to Elizabeth Harris at the
2 end of the quarter June 30th, 2011, is it another example of
3 that?

4 A. Yes.

5 Q. And does this one relate to FileTek?

6 A. Yes, and this was a -- if I remember correctly back to
7 our -- we acquired -- seized the assets from Iron Mountain, and
8 this was associated with those customers.

9 Q. What happened with Iron Mountain? Explain that.

10 A. We -- I think we had roughly a \$400 million acquisition of
11 the digital business of Iron Mountain. Iron Mountain decided
12 to sell off their digital business, digital archiving business
13 because we had a digital archiving business and Zantaz's idea
14 was to combine the two or use them as a complimentary sort of
15 vehicle to sell more to customers.

16 Q. This reads "Extension of" -- or Mr. Chamberlain is writing
17 here "Extension of existing agreement to cover DRC-CM
18 customers." Is that a reference to Iron Mountain?

19 A. Yes.

20 Q. "Need to pay \$1,596,146.06 today. I will forward executed
21 agreement and invoice as soon as I have it. Please be ready to
22 move on this one." Do you see that?

23 A. Yes.

24 Q. Is this another example of a direction to you to pay a
25 reseller on the last day of the quarter?

1 A. Yes.

2 Q. And did you have similar concerns relating to this that
3 you had to the FileTek and DiscoverTech transactions that we
4 were looking at?

5 A. Yes. After 2010 I viewed every payment to a reseller with
6 caution, with more eyes than I usually would have, asked more
7 questions but I knew that, you know, those were -- those
8 questions are not going to be answered in my mind.

9 MR. LEACH: Let me draw your attention to page 6, and
10 if we could zoom in to -- Well, let's first start on page 7.

11 BY MR. LEACH:

12 Q. Do you see an email from someone named Gary Szukalski to
13 Joel Scott, Bill Loomis and Stouffer Egan?

14 A. Yes.

15 Q. Do you recognize any of those names?

16 A. No. I have not interacted with them.

17 Q. Well, how about Mr. Egan, did he have interaction with
18 them?

19 A. Yes, he was the chief sales guy for Autonomy, Inc.

20 Q. Okay. And does Mr. Szukalski appear to be passing on a
21 proposal/quote relating to Autonomy and Iron Mountain?

22 A. Yes.

23 MR. LEACH: And if we could zoom out and look at the
24 top.

25 \\\

1 **BY MR. LEACH:**

2 **Q.** Do you see where Mr. Egan is forwarding that to Shushovan
3 Hussain and Pete M?

4 **A.** Uh-huh.

5 **Q.** Do you know who Pete M is?

6 **A.** Pete Menell. He was the CTO at Autonomy.

7 **MR. LEACH:** Okay. And if we could zoom out and go to
8 page 6 up at the top.

9 **BY MR. LEACH:**

10 **Q.** And do you see an email from Mike Lynch to Steve
11 Chamberlain dated June 30th, 2011?

12 **A.** Yes.

13 **Q.** And in response to Mr. Chamberlain's email "Mike-given an
14 amount of 1.6 million we also need your approval on this.
15 Thanks. Steve Chamberlain." Do you see that?

16 **A.** Yes.

17 **Q.** And Dr. Lynch wrote "Ok as long as we are selling it on."
18 Do you see that?

19 **A.** Yes.

20 **Q.** Did you take that as approval to make the \$1.596 million
21 payment to FileTek?

22 **A.** Yes.

23 **Q.** At this point in time, June of 2011, did you have concerns
24 that these payments to resellers were being used to get
25 resellers money to pay for Autonomy software?

1 **A.** I was -- well, I was seeing a lot less of it as compared
2 to what we had seen in 2010, so I took it as we were not doing
3 as many as we were doing before.

4 **Q.** But you still saw it?

5 **A.** Yes.

6 **Q.** And did you have concerns in your own mind that this was
7 to get resellers' money?

8 **A.** This was more of the same, yes.

9 **Q.** More of the same?

10 **A.** Yes.

11 **Q.** Meaning what?

12 **A.** Meaning more of the same where you are selling -- you're
13 buying software from resellers and then the resellers are
14 buying your software, so it was more of those similar type of
15 transactions.

16 **Q.** You mean round-trip transactions?

17 **A.** That -- that was my assumption and worry.

18 **Q.** Let me draw your attention, please, to Exhibit 2268.

19 **MR. LEACH:** I'd move it into evidence.

20 **THE COURT:** 2268 admitted.

21 (Trial Exhibit 2268 received in evidence)

22 **MR. LEACH:** And if we could start, Mr. Hasan, on page
23 2 in the top half. Actually, to get the header of the email we
24 need to look at the bottom of page 1.

25 \\

1 **BY MR. LEACH:**

2 **Q.** Do you see an email from Lisa Harris to Cheri Mezzapelle;
3 am I pronouncing that correctly?

4 **A.** Yeah.

5 **Q.** And Steve. Do you see that?

6 **A.** Yes.

7 **MR. LEACH:** Okay. And now if we can go to page 2,
8 Mr. Hasan.

9 **BY MR. LEACH:**

10 **Q.** Ms. Harris is writing with a copy to you and Helen
11 Bradley, "Hi Cheri. We need to pay 8.2M to Microtech LLC
12 today" in bold underline. Do you see that language?

13 **A.** Yes.

14 **Q.** Microtech, was that one of the resellers that you had
15 concerns about?

16 **A.** Yes.

17 **Q.** "I believe that you have enough money in the Comerica
18 account to cover this. I have noted the bank account details
19 below (they should be the same as the ones you have on file
20 already).

21 "The payment is authorized by MRL, Shushovan, Pete and
22 Steve." Do you see that?

23 **A.** Yes.

24 **Q.** MRL, did you understand that to be Mike Lynch?

25 **A.** Yes.

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1 Q. Shushovan, that's Shushovan Hussain?

2 A. Yes.

3 Q. Pete, is that Pete Menell?

4 A. That is correct.

5 Q. And Steve, is that Steve Chamberlain?

6 A. Yes.

7 Q. "I have copied Steven into this email so he can confirm
8 that this payment is properly authorized." Do you see that?

9 A. Yes.

10 Q. Okay. Let's go to page 1. And in the bottom half do you
11 see where Mr. Chamberlain writes to you, Lisa Harris and others
12 "Confirmed" for the \$8.2 million payment to Microtech?

13 A. Yes.

14 Q. And do you believe that payment was made?

15 A. Yes, it was.

16 Q. Let me draw your attention, please, to 15992.

17 MR. LEACH: I move it into evidence.

18 THE COURT: 15992 admitted.

19 (Trial Exhibit 15992 received in evidence)

20 MR. LEACH: And if we could zoom into the top, please.
21 There you go.

22 BY MR. LEACH:

23 Q. This is an email from Mr. Chamberlain to you on August
24 17th, 2011, with a copy to Lisa Harris, Ms. Mezzapelle and
25 Seema Khan.

1 A. Yes.

2 Q. And do you see the subject FileTek Inc. --

3 A. Yes.

4 Q. -- or FileTek invoice? Excuse me.

5 A. Yes.

6 Q. Is this another direction from Mr. Chamberlain for you to
7 make a wire payment to a reseller for product?

8 A. Yes.

9 Q. And Mr. Chamberlain wrote "Not happy. I sent approvals
10 earlier (to Lisa) and have paid FileTek many times before. I
11 have attached approvals again and also dug out details from
12 previous payment. Please get this paid." Do you see that
13 language?

14 A. Yes.

15 Q. What did you understand that to mean?

16 A. That we had not paid FileTek and he had asked us to pay it
17 previously, it had not been paid then and he was asking us to
18 pay it that day.

19 Q. That day?

20 A. Yeah.

21 Q. Was there some sense of urgency in your mind?

22 A. I was under the assumption that our friends at FileTek had
23 escalated up the chain.

24 Q. Okay. Is this another example of Mr. Chamberlain asking
25 you to approve of payments to a reseller?

1 A. Yes.

2 Q. And did you have similar concerns that you had in relation
3 to the other ones that we've looked at?

4 A. That's correct.

5 Q. The next day, August 18th, 2011, did you learn that HP was
6 acquiring Autonomy?

7 A. Yes.

8 Q. Was that news to you?

9 A. It was.

10 Q. Were you surprised?

11 A. Very. Very surprised.

12 Q. Okay. In your mind did you develop concerns about why
13 these payments to FileTek and Microtech were being made shortly
14 before the HP acquisition?

15 A. My --

16 MR. HEBERLIG: Objection. That mischaracterizes the
17 testimony.

18 THE COURT: Overruled.

19 THE WITNESS: So my --

20 Can you repeat the question again? Sorry.

21 BY MR. LEACH:

22 Q. In your own mind, how did the announcement of the
23 acquisition affect your view of some of these last minute
24 payments to Microtech and FileTek?

25 A. So, typically, you go through a diligence process before

1 any company acquires another company. Given the nature of the
2 UK sort of law regarding the acquisition, there's only so many
3 procedures one could do, so my assumption was, we were trying
4 to clean up the historical items on the balance sheet in
5 conjunction with the announcement.

6 **Q.** What do you mean by "Clean up the items on the balance
7 sheet"?

8 **A.** So you have a lot of receivables, you had a lot of
9 payables from resellers, you had a bunch of these transactions
10 lying on the books, so the construct was you are going to --
11 you are going to be acquired by a company. At that point in
12 time there will be more details required of us to produce and
13 the intent was to make sure the books and accounts were as
14 clean as possibly they could be in an attempt to make sure that
15 we get on with our post-acquired lives in a mutually beneficial
16 manner.

17 **Q.** These are inferences that you were drawing in the moment
18 based on your knowledge --

19 **A.** Yeah. This was completely me --

20 (Overlapping speakers.)

21 **COURT STENOGRAPHER:** I'm sorry. I'm sorry. Could you
22 repeat your question?

23 **MR. LEACH:** Thank you. That wasn't clear.

24 **BY MR. LEACH:**

25 **Q.** These were inferences that you were drawing in your own

1 mind at the time?

2 **A.** That's correct.

3 **Q.** After the announcement of the HP acquisition but before
4 the close, were you asked to cancel any transactions or write
5 off any debts?

6 **A.** I thought we were -- my recollection is a little hazy, but
7 I thought we wrote off a bunch of debt on the books on AR. I
8 thought we wrote off a bunch.

9 **Q.** Did that include some of the resellers that we've looked
10 at?

11 **A.** Yes.

12 **Q.** Did that include VMS?

13 **A.** Yes.

14 **Q.** Did that corroborate, in your mind, that -- some of the
15 concerns you had relating to the resellers?

16 **A.** Absolutely.

17 **MR. LEACH:** May I have a moment, Your Honor?

18 (Brief pause.)

19 **MR. LEACH:** Nothing further, Your Honor.

20 **THE COURT:** Okay. Cross-examination?

21 **MR. HEBERLIG:** Thank you, Your Honor.

22 May I hand up a couple of binders, Your Honor?

23 **THE COURT:** Thank you.

24 **MR. HEBERLIG:** I have a smaller one that's 3500
25 materiality. May I approach the witness or --

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1 **THE COURT:** Oh, go, yes, of course --

2 **MR. HEBERLIG:** -- hand them up?

3 **THE COURT:** -- and you don't have to ask permission,
4 just go ahead.

5 **MR. HEBERLIG:** Thank you, Your Honor.

6 Here you go, sir. You don't need to open that now.

7 May I proceed?

8 **THE COURT:** Please.

9 **MR. HEBERLIG:** Thank you, Your Honor.

10 **CROSS-EXAMINATION**

11 **BY MR. HEBERLIG:**

12 **Q.** Good morning. Can you give me the correct pronunciation
13 of your last name so I get it right?

14 **A.** It's Vaidyanathan.

15 **Q.** Vaidyanathan?

16 **A.** Yeah.

17 **Q.** Okay. I'm Brian Heberlig. I represent Dr. Lynch. You
18 and I have not met before, correct?

19 **A.** Correct.

20 **Q.** And just as we have never met before, you have also never
21 met Mike Lynch, correct?

22 **A.** Oh, I've met him once in the San Jose office when Autonomy
23 had just acquired Interwoven.

24 **Q.** All right. But you have never had any conversation with
25 Mike, correct?

1 A. No. Yeah. That's correct.

2 Q. Okay. And so you've never discussed with Mike any of the
3 matters that you've talked about in court today, correct?

4 A. Not personally.

5 Q. Meaning you have not had a conversation --

6 A. No, I haven't.

7 Q. -- with Mike Lynch about the matters that you testified
8 about?

9 A. Yes.

10 Q. Now, I believe you said that you were educated in India;
11 is that right?

12 A. That's correct.

13 Q. And that's where you got your accounting degree?

14 A. Yes.

15 Q. And you're a chartered accountant?

16 A. Yes.

17 Q. Which is the confidentiality of a CPA but in India?

18 A. Yes.

19 Q. You're not a US CPA?

20 A. I am not.

21 Q. And you've never had any training in the IFRS or what's
22 known as the International Financial Reporting Standards,
23 correct?

24 A. That's correct.

25 Q. Pardon?

1 A. That's correct.

2 Q. Okay. I'd like just to cover a little bit about your work
3 history. I'll come back to your time at Interwoven and
4 Autonomy, but just so we have it correct the roles you had
5 starting at Interwoven -- again, I'll come back in more
6 detail -- you started at Interwoven in the India office; is
7 that correct?

8 A. Yes.

9 Q. And when was that again?

10 A. 2004.

11 Q. And in the beginning, am I right, that you spent part of
12 your time geographically in India and from time to time you
13 traveled to the US as well?

14 A. That's correct.

15 Q. Interwoven was in California, right?

16 A. Yes.

17 Q. In the Bay Area?

18 A. That is correct.

19 Q. All right. In 2008 you moved to the US full-time, right?

20 A. Yes.

21 Q. Still with Interwoven?

22 A. Yes.

23 Q. And you were located in California?

24 A. Correct.

25 Q. And at that time Interwoven had a finance group of about

1 10 to 15 people?

2 A. That's -- that's correct.

3 Q. And among that group were your colleagues Brent Hogenson.

4 A. Uh-huh.

5 Q. Reena Prasad?

6 A. Uh-huh.

7 Q. And Percy Tejeda?

8 A. Yes.

9 Q. And you worked closely with all three of those
10 individuals?

11 A. Correct.

12 Q. And you all stayed together when you joined Autonomy,
13 correct?

14 A. Correct.

15 Q. And when you left Autonomy, you continued to work with
16 some of those individuals, correct?

17 A. Yes.

18 Q. You went to another software company called TIPCO?

19 A. Yes.

20 Q. And that was a US public company?

21 A. Correct.

22 Q. And Mr. Hogenson was already there, correct?

23 A. Yes.

24 Q. And you worked with him when you got there?

25 A. Correct.

1 Q. And Ms. Prasad also worked there for a period of time as
2 well?

3 A. Correct.

4 Q. And I think you said that you had a close working
5 relationship with Mr. Hogenson?

6 A. That's correct.

7 Q. All right. So let's go back and focus on your time at
8 Interwoven before Autonomy bought the company. Okay?

9 They were a US software company, correct?

10 A. Yes.

11 Q. And they were publicly traded on the NASDAQ Stock
12 Exchange?

13 A. Correct.

14 Q. As a US company, Interwoven followed what was known as US
15 Generally Accepted Accounting Principles or GAAP, correct?

16 A. Correct.

17 Q. And the accounting decisions you made at Interwoven were
18 required to comply with GAAP?

19 A. Correct.

20 Q. Now, in -- moving forward, in January of 2009, Autonomy
21 agreed to purchase Interwoven, correct?

22 A. Correct.

23 Q. And it was a big deal?

24 A. It was.

25 Q. Autonomy agreed to pay 775 million, or thereabouts, for

1 Interwoven?

2 A. Correct.

3 Q. And that deal officially closed in March of 2009?

4 A. Yeah.

5 Q. And after that, Autonomy owned Interwoven?

6 A. Yes.

7 Q. Now, Autonomy was a British software company?

8 A. Uh-huh.

9 Q. It had operations all around the world?

10 A. Yes.

11 Q. And it was incorporated in the United Kingdom?

12 A. Uh-huh.

13 Q. It was a public company, but it traded on the London stock
14 exchange, right?

15 A. Correct.

16 Q. And its main finance department was in the Cambridge
17 office in UK, correct?

18 A. Correct.

19 Q. And that's where Mr. Chamberlain was located?

20 A. Yes.

21 Q. Now, Autonomy also had offices in London?

22 A. Uh-huh.

23 Q. And -- is that a yes?

24 A. Yes.

25 Q. Sorry. I just didn't hear you.

1 A. Yes.

2 Q. And that's where the chief financial officer, Shushovan
3 Hussain, was located?

4 A. Yes.

5 Q. And that's also where Mike Lynch was located --

6 A. Yes.

7 Q. -- correct?

8 And he was the CEO?

9 A. Yes.

10 Q. That's chief executive officer?

11 A. Yes.

12 Q. Now, as a UK company, Autonomy followed the IFRS, correct?

13 A. Yes.

14 Q. Again, the International Financial Reporting Standards.

15 A. Correct.

16 Q. And just to be crystal clear about this, even though
17 Interwoven, before the acquisition, had followed US GAAP?

18 A. Uh-huh.

19 Q. After the acquisition, now owned by a UK company, it was
20 required to comply with IFRS, correct?

21 A. Correct.

22 Q. Okay. So the rules of what accounting standard applies
23 are based on where the parent company is located, right?

24 A. Correct.

25 Q. And as a British company, an international company, IFRS

1 controlled?

2 A. Correct.

3 Q. Now, that first year after the acquisition, am I right
4 that the UK financial department or finance department did not
5 do much to integrate you and your colleagues from Interwoven?

6 A. Yes.

7 Q. I think you already said you didn't get any training or
8 tutorial on the IFRS, correct?

9 A. Yes.

10 Q. And you had very little interaction that first year with
11 the UK finance department, right?

12 A. Yes.

13 Q. And you also didn't have a whole lot of interaction with
14 your counterparts at the other American businesses that were
15 part of Autonomy. Is that also fair?

16 A. Well, we would talk from time to time, but not as detailed
17 as one cohesive financing team.

18 Q. All right. And so that first year you were largely still
19 focused on the legacy Interwoven business --

20 A. Yes.

21 Q. -- correct?

22 A. Yes.

23 Q. Now, your responsibilities from preacquisition to post --
24 again, in just that first year -- remained largely the same,
25 right?

1 A. Pretty much.

2 Q. And they included something called "accounts payable"?

3 A. Yes.

4 Q. And just so we're clear on what that means, that is the
5 department that pays Autonomy's bills, right?

6 A. Yes.

7 Q. Including things that Autonomy purchased?

8 A. Uh-huh.

9 Q. And just regular old bills like electricity and utilities?

10 A. Correct.

11 Q. Now, there came a time in 2010 when there was an effort to
12 consolidate the financial function in Autonomy's American
13 businesses, correct?

14 A. Correct.

15 Q. And you testified about that. I want to just get a little
16 more detail about the American businesses of Autonomy.

17 A. Uh-huh.

18 Q. I think you described them as companies called -- Zantaz
19 was one?

20 A. Uh-huh.

21 Q. ETalk was another?

22 A. Yes.

23 Q. Verity?

24 A. Uh-huh.

25 Q. And Autonomy, Inc.?

1 **A.** Yes.

2 **Q.** And then of course Interwoven?

3 **A.** Yes.

4 **Q.** Is it fair to say those were the principal American
5 businesses of Autonomy that you can recall?

6 **A.** Yes. There was a few others, but they were all tiny.

7 **Q.** All right. I'd like to show you an organizational chart
8 if I may.

9 **A.** Uh-huh.

10 **Q.** Bear with me one second. It's Exhibit 7878.1.

11 **THE COURT:** I'm sorry, what is it?

12 **MR. HEBERLIG:** Sorry, Your Honor. It is 7878.1 and
13 that is tab 46A of the binder.

14 **THE COURT:** Tab 46 is 7878?

15 **MR. HEBERLIG:** Right. It's A, 46A, the document right
16 behind that.

17 **THE COURT:** Oh, 46A. Thank you very much.

18 **MR. HEBERLIG:** Yes, sir.

19 **THE COURT:** Okay. Admitted.

20 (Trial Exhibit 7878.1 received in evidence)

21 **MR. HEBERLIG:** Thank you.

22 Can we show that to the witness, please, and the jury.

23 **THE CLERK:** Thank you.

24 **MR. HEBERLIG:** Thank you. Sorry.

25 All right. I know that this is a little small to read.

1 I'm going to ask if we could first zoom in on the left-hand
2 side of the document from the parent company on down.

3 **BY MR. HEBERLIG:**

4 **Q.** Okay. So this is an organizational chart -- am I
5 right? -- of the various corporate entities of Autonomy?

6 **A.** Yes.

7 **Q.** And at the very top is the Autonomy corporation of England
8 and Wales, correct?

9 **A.** Uh-huh.

10 **Q.** And is what we're seeing on the left-hand side Autonomy's,
11 essentially, European and Asian businesses?

12 **A.** Correct.

13 **Q.** So there's Autonomy Systems Limited, correct?

14 **A.** Uh-huh.

15 **Q.** And then a bunch of companies that are underneath.

16 **MR. HEBERLIG:** Let's shift over to the right-hand side
17 of the document, please.

18 **BY MR. HEBERLIG:**

19 **Q.** Okay. So this is the part of the business that I think is
20 sometimes referred to as the Americas Group. Is that familiar
21 with you?

22 **A.** Uh-huh.

23 **Q.** Okay. And again, they're those companies we just talked
24 about, the principal American businesses of Autonomy, right?

25 **A.** Yeah.

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1 Q. And Interwoven is one of the roughly five. I'm sorry. I
2 think you just have to give a verbal --

3 A. Yes.

4 Q. Okay. Thank you.

5 A. Yes. Sorry.

6 MR. HEBERLIG: We can take that down.

7 BY MR. HEBERLIG:

8 Q. So the announcement of this new financial structure
9 occurred -- do you recall? -- on April 19th, 2010?

10 A. I don't remember the date, but --

11 Q. Let me see if I can help with that.

12 MR. HEBERLIG: I'd like to call up Exhibit 7882 --

13 THE COURT: 7882.

14 MR. HEBERLIG: -- which is tab 49 in the binder.

15 THE COURT: Okay. Admitted.

16 MR. HEBERLIG: Thank you, Your Honor.

17 (Trial Exhibit 7882 received in evidence)

18 BY MR. HEBERLIG:

19 Q. Could we just start with the bottom email?

20 All right. Do you see this is an announcement on April
21 19th. It's from some email account on behalf of Brent
22 Hogenson. Do you see that?

23 A. Uh-huh.

24 Q. And is it fair to say this was the rollout of the new
25 consolidated Americas team?

1 A. Yes.

2 Q. All right. And you are listed among the people who were
3 getting a new assignment as a result of this consolidation?

4 A. Correct.

5 Q. Going forward, you would be reporting to the corporate
6 controller, and you'd be responsible for the general ledger
7 reporting and payroll, correct?

8 A. Yes.

9 MR. HEBERLIG: Okay. And there are some others on
10 this document. Maybe we can scroll to the next page, please.
11 If you could just highlight the top part.

12 BY MR. HEBERLIG:

13 Q. So we've heard the name before Percy Tejada. He was going
14 to be responsible going forward for revenue, correct?

15 A. Uh-huh.

16 Q. But again, that was revenue of the Americas businesses,
17 not the entire Autonomy group, right?

18 A. Correct.

19 Q. All right. And we have Ms. Reena Prasad, correct?

20 A. Uh-huh.

21 Q. And she was responsible for collections and credit?

22 A. Correct.

23 Q. And that function -- am I right? -- is sort of the
24 flip-side of accounts payable, that you handled; while you paid
25 Autonomy's bills, she helped collect them?

1 **A.** That's correct.

2 **Q.** So if people owed money to Autonomy, her job was to get it
3 paid?

4 **A.** Correct.

5 **MR. HEBERLIG:** And then if we scroll back out --
6 actually, I think we're done with that one.

7 Let's talk about your new reporting structure. I have
8 another org chart, Judge, that's Exhibit 7810.3.

9 **THE COURT:** 7810.3 admitted.

10 (Trial Exhibit 7810.3 received in evidence)

11 **MR. HEBERLIG:** That's at tab 37. And if we could go
12 to page 2, please -- I'm sorry, page 13.

13 All right. I will enlarge this. Maybe we could do that
14 now, Bret.

15 **BY MR. HEBERLIG:**

16 **Q.** First of all, you see this is an org chart of the finance
17 function? Oh, we just lost it.

18 **MR. HEBERLIG:** Could you just go back out for a sec?

19 **BY MR. HEBERLIG:**

20 **Q.** Do you see that finance function is up there in the
21 left-hand corner?

22 **A.** Yep.

23 **MR. HEBERLIG:** Okay. Now, Bret, if you wouldn't mind
24 making it a little bit larger.

25 \\

1 **BY MR. HEBERLIG:**

2 **Q.** All right. So does this depict the finance function as it
3 existed at the time of this consolidation?

4 **A.** Yes.

5 **Q.** So let's just take a moment. Obviously Mr. Hussain, at
6 the top, was the CFO, correct?

7 **A.** Correct.

8 **Q.** And he was in the UK. Below him was Steve Chamberlain,
9 correct?

10 **A.** Yes.

11 **Q.** I want to focus on the Americas side, but -- but just
12 briefly, on the left-hand side of the document under Lisa
13 Harris, that's where all the UK accountants resided, correct?

14 **A.** Right.

15 **Q.** EMEA means Europe, Middle East and Africa?

16 **A.** Correct.

17 **MR. HEBERLIG:** All right. Now let's focus on the
18 right-hand side, please.

19 **BY MR. HEBERLIG:**

20 **Q.** And we see you sort of in the middle of the document,
21 right?

22 **A.** Uh-huh.

23 **MR. HEBERLIG:** Can we highlight Mr. Vaidyanathan?
24 He's right here.

25 \\\

1 **BY MR. HEBERLIG:**

2 **Q.** All right. So let's just talk about who you reported to
3 in your reporting chain. Your direct supervisor was a Cynthia
4 Watkins, correct?

5 **A.** Uh-huh.

6 **Q.** And she was the controller; is that her position?

7 **A.** Yes.

8 **Q.** Okay. And Ms. Watkins reported to Mr. Hogenson?

9 **A.** Yes.

10 **Q.** And he was the head of finance again for the Americas?

11 **A.** Yes.

12 **Q.** And then he reported up to Steve Chamberlain who reported
13 up to Shushovan Hussain?

14 **A.** Yes.

15 **Q.** And not depicted on this chart, but you understood that,
16 Mr. Hussain reported to Mike Lynch, right?

17 **A.** Yes.

18 **Q.** So essentially there's five rungs on the corporate ladder
19 between Mike Lynch as the CEO and you in your position within
20 the Americas finance department?

21 **A.** Correct.

22 **MR. HEBERLIG:** We can take that down.

23 **BY MR. HEBERLIG:**

24 **Q.** A little bit more focus on your responsibilities with
25 respect to paying Autonomy's bills. That included some of the

1 software purchases that you testified about in your direct
2 examination, correct?

3 **A.** Correct.

4 **Q.** And we'll get into some of those, but let's focus for a
5 second on revenue recognition. That was not on your plate at
6 this time in the Autonomy Americas group, correct?

7 **A.** Correct.

8 **Q.** And even though there was someone assigned within the
9 Americas group to handle revenue, that was Mr. Tejeda, correct?

10 **A.** Correct.

11 **Q.** It's fair to say that all major revenue recognition
12 decisions at Autonomy were made in the UK?

13 **A.** Yes.

14 **Q.** And as a UK company that followed the IFRS, Autonomy
15 preferred to have UK accountants trained in the IFRS handling
16 the company's revenue recognition?

17 **MR. LEACH:** Objection, foundation.

18 **THE COURT:** Sustained.

19 **BY MR. HEBERLIG:**

20 **Q.** Was that logical to you?

21 **A.** Yes.

22 **Q.** Thank you.

23 Now, a few words about the company's outside auditors.

24 **A.** Uh-huh.

25 **Q.** They're -- Autonomy's outside auditors were with a firm

1 called Deloitte, correct?

2 A. That's correct.

3 Q. And Deloitte was one of the big four accounting firms?

4 A. That's correct.

5 Q. And that's generally understood to mean the top four
6 accounting firms in the world?

7 A. That is correct.

8 Q. The team -- the Deloitte team working for Autonomy was
9 located principally in the United Kingdom, correct?

10 A. Correct.

11 Q. And the UK finance team of Autonomy was responsible for
12 interfacing with Deloitte during their audits and reviews,
13 correct?

14 A. From an overall standpoint, that's correct.

15 Q. Okay. That wasn't one of your principal responsibilities,
16 correct?

17 A. Getting the audit done from a US standpoint, to the extent
18 it related to the US, was US responsibility; but overall, yes,
19 it was a UK responsibility.

20 Q. So the US had to package up some materials and send them
21 to the UK that were relevant for the --

22 A. No, no. The way it would happen is, the -- Deloitte would
23 have some agreed-upon procedures that would need to be done.
24 The San Jose unit of Deloitte would come in and audit us.

25 Q. Okay. And that occurred at the end of the quarters,

1 correct?

2 **A.** Yeah, quarters, sometimes toward the end of the year. End
3 of the year for certain.

4 **Q.** All right. And you understood that the main interface
5 with Deloitte was occurring at the end of the quarter in the
6 United Kingdom on site in those Cambridge offices, correct?

7 **A.** Correct.

8 **Q.** And just a few more about your responsibilities. So
9 you're familiar with the process -- generally familiar -- with
10 the process by which Autonomy would issue quarterly earnings
11 releases to the public, correct?

12 **A.** Yes.

13 **Q.** And you were not involved in working on those, right?

14 **A.** No.

15 **Q.** You were familiar with the general process that Autonomy
16 went through to have conference calls with investment analysts
17 after the quarter closed, correct?

18 **A.** Yes.

19 **Q.** And you were not involved in preparing anyone for those
20 investment analyst calls?

21 **A.** No.

22 **Q.** Likewise, there were annual financial statements prepared
23 by Autonomy that were much more detailed than the quarterly
24 press releases, correct?

25 **A.** That's correct.

1 Q. All right. And you weren't involved in preparing the
2 wording or the layout of those annual financial statements,
3 correct?

4 A. No, I wasn't.

5 Q. Am I right that you did not receive copies of what
6 Deloitte provided to the audit committee on a quarterly basis
7 in connection with its reviews?

8 A. No, I wasn't.

9 Q. And so obviously you had no firsthand information about
10 what Deloitte was discussing with the audit committee about the
11 transactions you've testified about today?

12 A. No, I don't.

13 Q. All right. Let me focus you on the period of time between
14 April and May of 2010 -- all right? -- and just so sort of
15 frame out the timeframe. We looked at the document before
16 where you got the new assignment on April 19th, correct?

17 A. Uh-huh.

18 Q. And I think you testified yesterday that as soon as you
19 got that new assignment one of your first things that you did
20 was to start looking at the procedures of the various American
21 businesses, correct?

22 A. Correct.

23 Q. So that started in late April 2010?

24 A. Thereabouts.

25 Q. And just to frame it from a timing perspective,

1 Mr. Hogenson was fired in July of 2010, correct?

2 A. Sounds about right.

3 Q. So there's a three month give-or-take period between when
4 you began that effort and when Hogenson was gone?

5 A. Yes.

6 Q. All right. I think you said that what you did in
7 connection with this process was what anyone would do when
8 assuming a new job like you did, correct?

9 A. Yes.

10 Q. Essentially get your arms around the situation of what's
11 going on at these other American companies, right?

12 A. Correct.

13 Q. Your search for those issues was not motivated by any
14 suspicion or belief that there were accounting problems at
15 Autonomy at the time?

16 A. That's correct.

17 Q. And that effort of looking into those issues I believe
18 culminated in a spreadsheet that you sent to Mr. Hogenson.
19 There may have been multiple versions, but one at least we've
20 seen was in early June of 2010. Do you remember that?

21 A. Yes.

22 Q. I think it came up in your direct examination.

23 A. Yes.

24 MR. HEBERLIG: Let's display that document, please.

25 It's Exhibit 3315.

1 **THE COURT:** In evidence.

2 (Trial Exhibit 3315 received in evidence)

3 **BY MR. HEBERLIG:**

4 **Q.** And just let's look at the email first, but I'm
5 principally interested in the attachment, but just to --

6 So this is June 7th, 2010, you to Hogenson attaching a
7 list of issues and we see attachment there, it's a spreadsheet
8 at .xls, correct?

9 **A.** Yes.

10 **MR. HEBERLIG:** Let's look at that spreadsheet. Let's
11 start with page 2. And just for now enlarge the headings down
12 to like No. 3.

13 **BY MR. HEBERLIG:**

14 **Q.** All right. This was I believe a PDF, but it was an Excel
15 spreadsheet, correct?

16 **A.** It was an Excel spreadsheet.

17 **Q.** That's how you kept track of the issues?

18 **A.** Yeah.

19 **Q.** All right. Now, first and foremost, this was not a list
20 of accounting improprieties that you had discovered, correct?

21 **A.** Yeah. This was the list of issues that needed resolution?

22 **Q.** Many of them were straight just process issues like the
23 first few we see here, correct?

24 **A.** Yes.

25 **Q.** And if we focus on the first entry -- it's a little hard

1 to read because it's crossed out -- does that mean you actually
2 tackled this one --

3 A. Yes.

4 Q. -- by June 10th -- by June 7th?

5 A. Yes.

6 Q. All right. That first entry looks to be a sort of a data
7 entry problem about what was going on with payroll. Is that a
8 fair summary?

9 A. That appears -- yeah. Well, it's -- if you don't give
10 the -- if multiple people are involved in the processing of
11 commissions and then you get different data, different types of
12 versions of data and then your payroll will be incorrect,
13 you'll have all sorts of control-related issues.

14 Q. Not a good idea to have multiple people entering data on
15 the same issue; better to get it down to one, right?

16 A. Correct.

17 Q. That's a process issue?

18 A. Yes, yes.

19 Q. And throughout this document we see somewhere around a
20 dozen or so other process issues, and you characterize them as
21 such, right?

22 A. Yeah.

23 Q. Okay. Now, there are some other issues on the list that
24 you identify as a systems issue, and why don't we look at one
25 of those on page 3.

1 And it's No. -- No. 3 -- No. 2. I'm sorry. Can't read
2 my -- all right. So this is in the section of systems issues,
3 correct?

4 A. Uh-huh.

5 Q. And this No. 2 issue, "Explore the possibility of setting
6 up ACH for all units in North America," right?

7 A. Yes.

8 Q. And ACH is electronic bill pay?

9 A. Yes.

10 Q. Okay. So obviously not anything remotely resembling
11 accounting fraud, correct?

12 A. Yeah.

13 Q. Okay. And there are about another dozen or so issues that
14 are in this list that are identified as systems issues,
15 correct?

16 A. Correct.

17 Q. There are some --

18 MR. HEBERLIG: We can take that blow up down --

19 BY MR. HEBERLIG:

20 Q. There are some other issues identified as accounting
21 related, right?

22 A. Yes.

23 Q. But even those, characterized as accounting issues, were
24 not issues that were involving accounting fraud or
25 improprieties; is that fair?

1 A. It's fair.

2 Q. And if we look at just one of them on page 3 that is
3 No. 3, this is something having to do with an accrual process
4 and the fact that the different American businesses were
5 handling it different ways, correct?

6 A. Yes.

7 Q. And an accrual is like an accounting estimate right?

8 A. Yes.

9 Q. And it's important to have that done properly, right?

10 A. Yes. It could -- if -- in this particular case, you are
11 not recording the cost. That's what it meant. There are
12 financial implications.

13 Q. So bringing these four businesses together let's all sort
14 of row in the same direction, do the same thing, right?

15 A. Correct.

16 Q. All right. So let's talk about the one entry in this
17 document you discussed with the government at the very end
18 related to FileTek.

19 MR. HEBERLIG: And if we could go to page 5 and blow
20 up that portion about capitalized software.

21 BY MR. HEBERLIG:

22 Q. All right. Do you recall discussing this in direct
23 examination?

24 A. Yes.

25 Q. I'm going to come back to FileTek in greater detail, but

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1 looking at this entry am I correct that there is nothing in
2 your write-up of the issue that is focused on this being a
3 potentially linked transaction?

4 **A.** That is correct. At this point I am not.

5 **MR. HEBERLIG:** Okay. We can take that one down.

6 **BY MR. HEBERLIG:**

7 **Q.** You described, I believe, a meeting with Steve Chamberlain
8 to discuss these issues in your summary spreadsheet in
9 person --

10 **A.** Correct.

11 **Q.** -- correct?

12 And that was -- that document was I think June 7. It was
13 sometime thereafter but still in the month of June?

14 **A.** Yes.

15 **Q.** In San Jose at your offices?

16 **A.** Yes.

17 **Q.** Okay. And you reviewed the spreadsheet with him?

18 **A.** That's correct.

19 **Q.** All right. Let me transition to another topic, and that
20 has to do with Autonomy's software sales using
21 resellers --

22 **A.** Okay.

23 **Q.** -- okay?

24 And you testified about that at some length in your
25 direct?

1 A. Yes.

2 Q. All right. Just so we're on the same page, it is
3 common -- is it not? -- for software companies to sell their
4 products using resellers?

5 A. It is common.

6 Q. All right. And we heard some examples in opening
7 statements -- I don't think you were here -- one example given
8 was a farmer selling potatoes to McDonald's, McDonald's sells
9 them on as French fries. I know that's a sort of simplistic
10 example.

11 In that scenario the middleman, McDonald's, would
12 essentially be performing the reseller role?

13 A. Yes.

14 Q. Maybe another way to look at it, a supplier sells baked
15 beans to a grocery store, the grocery store puts them on the
16 shelves. The sale to the grocery store of the product is the
17 sale to the reseller, right?

18 A. Yes.

19 Q. So if you think about it in Autonomy terms, they sell
20 software to a reseller, and the reseller goes out and tries to
21 find someone to buy it, right?

22 A. Correct.

23 Q. Okay.

24 And before you joined Autonomy, when you were at
25 Interwoven, it's fair to say Interwoven sold its software quite

1 often using resellers and strategic partners?

2 **A.** Correct.

3 **Q.** And there's nothing wrong with that, is there?

4 **A.** There's nothing wrong.

5 **Q.** In the year before Autonomy acquired Interwoven, am I
6 correct that Interwoven sold in the neighborhood of 65 percent
7 of its new license orders using resellers or other strategic
8 partners?

9 **A.** I don't necessarily recall that number, but we did sell
10 quite a bit through the indirect channel.

11 **Q.** Okay. Does it seem roughly familiar? I mean, I could try
12 to refresh you, but is that in the ballpark of what you
13 remember?

14 **A.** I don't remember, to be honest.

15 **Q.** All right. Let's see if I can then. I'll tell you what,
16 I'll move on and we'll come back to that one.

17 On the reseller sales, focusing still on your time at
18 Interwoven, we've already talked about the fact that Interwoven
19 followed US GAAP, right?

20 **A.** Uh-huh.

21 **Q.** And under Interwoven's accounting policies, the company
22 recognized revenue in connection with reseller sales when the
23 reseller sold the product to an end user, correct?

24 **A.** Yes.

25 **Q.** Okay. And under the Interwoven policy, again, under US

1 GAAP, it was the end user that was the customer, not the
2 reseller?

3 **A.** In the books it was the reseller who was the customer, but
4 the -- you always have an end user noted -- denoted in that
5 agreement, almost calling the agreement almost tripartite.

6 **Q.** But for purposes of recognizing revenue, just so we're
7 clear, so when the company would record in its books we've
8 received revenue, at Interwoven it wasn't upon the sale to the
9 reseller, it was when the reseller sold to the end user?

10 **A.** It was when the company sold to the reseller and the
11 reseller had -- we had evidence that the reseller had an end
12 user who was contacted by it.

13 **Q.** Right. So the evidence you required -- this sort of
14 accounting jargon, but persuasive -- excuse me -- persuasive
15 evidence of an arrangement with the end user, right?

16 **A.** That is correct.

17 **Q.** That's it?

18 **A.** That's correct.

19 **Q.** And typically persuasive evidence of an arrangement with
20 an end user is a contract?

21 **A.** Is a contract?

22 **Q.** Okay. Again, just so we're on the same page then, you
23 recognized revenue in most cases when there was a contract in
24 the hands of an end user to buy the software?

25 **A.** Correct.

1 Q. And that's how most US companies following US GAAP
2 accounted for reseller sales, correct?

3 A. Correct.

4 Q. Have you heard of that method described before as "sell
5 through"?

6 A. Yeah.

7 Q. Okay. Now Autonomy, as a UK company, I think we've
8 already established followed IFRS, right?

9 A. Uh-huh.

10 Q. And it recognized its revenue pursuant to the IFRS
11 criteria, right?

12 A. With a caveat.

13 Q. Okay. Well, I think we've established you were not very
14 familiar with the IFRS revenue recognition criteria, correct?

15 A. No. With a caveat.

16 Q. Pardon?

17 A. With a caveat.

18 Q. Okay. Well, I'll let the government explore the caveat,
19 but let me ask my questions.

20 Am I right that under Autonomy's accounting policy,
21 Autonomy recognized revenue upon the sale to the reseller, not
22 the end user?

23 A. I don't think that was necessarily true. We had evidence
24 of the third-party end user in most cases.

25 Q. That's fair, but let me -- let me see if I can clarify

1 that.

2 Autonomy, when it sold to resellers, it had a contract
3 with a reseller, typically would identify the intended end user
4 of the product, correct? We can go look at a few, if you'd
5 like.

6 **A.** Yes.

7 **Q.** Okay. But while they identify the intended end user,
8 their policy -- the accounting policy the company followed --
9 was upon the sale to the reseller, even if there was no
10 contract yet in place with the end user, the company recognized
11 revenue. Did you understand that from your time at Autonomy?

12 **A.** No. That is not what I understood.

13 **Q.** Okay.

14 Can you identify the provision of the IFRS that governs
15 the recognition of revenue for contracts like this?

16 **A.** So couple of things here.

17 **Q.** That's a -- that's actually a specific question. Can you
18 identify the provision --

19 **THE COURT:** He's answering the question. Go ahead.

20 **THE WITNESS:** So couple of things. First, the
21 specific guidance on the IFRS for revenue recognition was
22 listed in the accounting policy of Autonomy. That is one.

23 The second piece that was associated with this was that
24 Autonomy stated that they would follow the rules of US GAAP in
25 all practical possibilities to the extent possible.

1 **BY MR. HEBERLIG:**

2 **Q.** Yeah. Where did they state that, in your recollection?

3 **A.** I thought it was somewhere in the accounting policy.

4 **Q.** Isn't it a fact that the accounting policy was laid out in
5 the annual reports filed by the company --

6 **A.** Yes.

7 **Q.** -- correct?

8 **A.** Yes.

9 **Q.** And they were, during the time that that's relevant to
10 this case, 2009 and 2010, both years annual reports were filed,
11 correct?

12 **A.** Yes.

13 **Q.** And in those annual reports am I not correct that the
14 company made quite explicitly clear that the accounting
15 policies were followed both generally and with respect to
16 revenue recognition with the IFRS?

17 **A.** I seem to recall that it -- it stated in the form of
18 revenue recognition policy it said we will follow US GAAP.
19 That is my recollection.

20 **Q.** Okay. I guess we'll do this. 2009 annual report,
21 Exhibit 428, which I believe is in evidence.

22 **THE COURT:** Why number is it?

23 **MR. HEBERLIG:** 428.

24 **THE COURT:** I don't think it is in evidence.

25 **MR. HEBERLIG:** Oh. If it's not, then I offer it.

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1 It's the 2000 --

2 **THE COURT:** Okay. 428?

3 **MR. HEBERLIG:** 428.

4 **THE COURT:** Okay. Admitted.

5 (Trial Exhibit 428 received in evidence)

6 **MR. HEBERLIG:** And if we can go to page 36, please, of
7 the document. And if we could enlarge the portion that talks
8 about company law.

9 Actually, before you enlarge that can you just back out
10 for a sec?

11 **BY MR. HEBERLIG:**

12 **Q.** This is in the statement of director's responsibilities in
13 the annual report, correct?

14 **A.** Yes.

15 **Q.** All right. And it's signed by Michael Lynch and Shushovan
16 Hussain?

17 **A.** Yes.

18 **MR. HEBERLIG:** All right. Now we can enlarge that
19 paragraph, please.

20 **BY MR. HEBERLIG:**

21 **Q.** I'll give you a second just to read it.

22 **A.** Yes.

23 **Q.** All right. Would you agree with me, at least in this
24 portion of the report, it makes clear that the company's group
25 financial statements are prepared in accordance with the IFRS?

1 A. Yes.

2 MR. HEBERLIG: And if we can go to the
3 responsibilities statement a little bit later in the same page
4 before the signature block.

5 BY MR. HEBERLIG:

6 Q. All right. Again, this is -- this is Mr. Lynch,
7 Mr. Hussain affirming that to the best of their knowledge, the
8 financial statements were prepared in accordance with the IFRS,
9 correct?

10 A. Yes.

11 Q. No mention of US GAAP in either section we just read,
12 correct?

13 A. Not in this, yes.

14 Q. And why don't we look at the actual specific revenue
15 recognition policies that were disclosed by the company.

16 A. Okay.

17 MR. HEBERLIG: Can we go to page 428-042? And
18 highlight down there starting at No. 2, "Significant Accounting
19 Policies" on down.

20 BY MR. HEBERLIG:

21 Q. All right. Do you see there, there's a -- these are sort
22 of the detailed notes of the financial statement, but there's a
23 note there on the basis of accounting, correct?

24 A. Yes.

25 Q. And the basis of accounting is that the international

1 financial -- excuse me -- that the financial statements have
2 been prepared in accordance with the IFRS, correct?

3 A. Yes.

4 Q. US GAAP not mentioned anywhere?

5 A. No.

6 Q. All right. Well, let's go to the revenue recognition
7 section of this, little heading e) on the next page.

8 This talks about how the group calculates revenue
9 recognition, correct?

10 A. Yes.

11 Q. And it talks about "as required by IAS 18," right?

12 A. Yes.

13 Q. And that is a provision of the IFRS, correct?

14 A. Correct.

15 Q. Okay. Again --

16 MR. HEBERLIG: And you could -- let's zoom out and
17 allow the witness to scan a bit --

18 BY MR. HEBERLIG:

19 Q. -- no reference anywhere in Autonomy's revenue recognition
20 policy that it follows US GAAP, right?

21 A. Yeah.

22 Q. Is that fair?

23 A. Fair.

24 Q. And you would agree that a company's annual financial
25 statement is the most authoritative source of its accounting

1 policies, correct?

2 **A.** Correct.

3 **Q.** That's what goes to the investing public every year,
4 right?

5 **A.** Correct.

6 **Q.** And it's well recognized whether you're in the US or the
7 UK that the annual statement has the most detailed information
8 and is the most authoritative source?

9 **A.** That is correct.

10 **Q.** So can we agree that Autonomy did, in fact, follow the
11 IFRS in its accounting policies?

12 **MR. LEACH:** Objection, foundation.

13 **MR. HEBERLIG:** I think I just laid it.

14 **THE COURT:** No. I think what you've established is
15 that they said they did. I mean, whether they did or not is
16 another issue.

17 **MR. HEBERLIG:** That's fair.

18 **BY MR. HEBERLIG:**

19 **Q.** They certainly never said to the investing public -- as I
20 think you suggested a moment ago -- that they were, instead of
21 following IFRS, following US GAAP, right?

22 **A.** Yes. I don't think they said that on the annual financial
23 statements. That is -- you are right. They didn't say that
24 there.

25 **Q.** That was the authoritative source for the market --

1 A. Correct.

2 Q. -- to understand what the company was doing?

3 A. Correct. They didn't say it there.

4 Q. Now, back to where I was on resellers, are you familiar --
5 do you have detailed knowledge of the IFRS rules on when it's
6 appropriate to recognize revenue upon a sale to a reseller,
7 given your lack of training?

8 A. Well, revenue recognition typically is not dramatically
9 different from an IFRS standpoint. US GAAP at that point in
10 time was more proscriptive. The IFRS, in my opinion, was a
11 little bit more principle based. That was the sort of
12 underlying difference between the two.

13 You would not -- you would not achieve a dramatically
14 different result, in my opinion, from an IFRS standpoint to a
15 US GAAP standpoint.

16 Q. Let me pick up on what you said there so -- in terms of
17 the differences between the two.

18 The US GAAP is a proscriptive standard I think as you
19 described it?

20 A. Uh-huh.

21 Q. It is a standard -- it is a series of rules, correct?

22 A. Correct.

23 Q. And they're often quite detailed on what can and can't be
24 done, right?

25 A. Correct.

1 Q. And in particular, with respect to software, there's sort
2 of a long, multi-page pronouncement on how you account for
3 software revenue recognition, correct?

4 A. Correct. Correct.

5 Q. In the UK under the IFRS I think you said it was more
6 principles based, right?

7 A. Correct.

8 Q. And so there are more general guidelines on how you apply
9 accounting principles, correct?

10 A. Correct.

11 Q. And so you would agree that an accountant applying those
12 policies would often have to exercise judgment, correct?

13 A. Yes.

14 Q. And sometimes under a general principles-based policy like
15 that, two reasonable accountants can reach different judgments
16 on the same issue and both not be wrong or perhaps both be
17 right; is that fair?

18 A. That's fair.

19 MR. HEBERLIG: All right. When does the Court wish to
20 go to today?

21 THE COURT: Is this a good time?

22 MR. HEBERLIG: Unfortunately, I have more to go, so
23 yes.

24 THE COURT: Pardon me?

25 MR. HEBERLIG: Unfortunately I have some more to go.

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1 **THE COURT:** Oh, no, no, that's all right I don't want
2 to cut you off at all. I mean, I just -- we can take a break
3 now if that's suitable for your --

4 **MR. HEBERLIG:** It's your pleasure. I could go all
5 day.

6 **THE COURT:** Well, my pleasure is always take a break.
7 All right. Ladies and gentlemen, we're going to take our
8 recess now. There's going to be a 45-minute recess. Quarter
9 of 1:00, please. Remember the admonition. Don't discuss the
10 case, allow anyone to discuss it with you, form or express any
11 opinion. I'll see you here in 45 minutes.

12 (Recess taken at 12:00 p.m.)

13 (Proceedings resumed at 12:01 p.m.)

14 (Proceedings were heard outside the presence of the jury:)

15 **THE COURT:** Okay. Let the record reflect that the
16 jurors have retired. Is this a -- is this an appropriate time
17 to have this discussion on the issue that you raised -- on the
18 issue that you raised? Is it appropriate now or do you want to
19 do it later or what?

20 **MR. LINCENBERG:** We can do it now or later.

21 **THE WITNESS:** Well, I think it would be a good idea to
22 do it now so I know what it is, and then we can discuss it
23 later, whoever wants to go forward. Mr. Weingarten?

24 **MR. WEINGARTEN:** I can start. We got an email from
25 Mr. Leach --

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1 **THE COURT:** Yeah.

2 **MR. WEINGARTEN:** -- last night or this morning, I
3 can't remember which, advising us that one of the jurors had
4 contact with an AUSA and the juror is going to law school and
5 wants legal advice. The part that was concerning is that the
6 juror sought the contact with the AUSA on the day of selection.

7 **THE COURT:** May I see the email from Mr. Leach? Okay.
8 Let's have that marked as a -- as a court exhibit. One moment,
9 please.

10 (Trial Exhibit 1 received in evidence)

11 (Brief pause.)

12 **THE COURT:** So let me just read it out loud, make sure
13 I understand this without naming names. The USA -- assistant
14 USA responded to the email -- oh.

15 On March 13th the juror emailed the assistant USA saying
16 he had been accepted to law school and he wanted to talk to the
17 assistant US attorney, whom he knew, about law school and he
18 said, "I got called for jury duty, so I find myself at the
19 federal building." The AUSA responded the following day, which
20 is -- the 14th was the actual jury selection day, right? So
21 the 13th was before anybody came into court. The 14th he's
22 here and the USA said he'd be happy to talk to him about law
23 school, suggested dates and then asked the juror, by the way,
24 when are you scheduled for jury duty, and then that afternoon
25 the juror said that he was in the federal building. This would

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1 have been at 2:05, prior to the time that he had been
2 designated on the jury, prior, 2:05. I mean, he had been in
3 the courtroom, he had been voir dired, but he had not been
4 designated.

5 He said it was for a criminal case being prosecuted by
6 your office, said to let him know if it would be improper for
7 them to speak if he was selected for jury service, and there
8 have been no responses.

9 Okay. Yes, Mr. Weingarten. Okay. So those are the
10 facts, right?

11 **MR. WEINGARTEN:** Right.

12 **THE COURT:** No dispute about the facts, or is there?

13 **MR. WEINGARTEN:** No, no. I mean, there are three
14 issues, Judge. One, there's a possibility it's utterly benign,
15 that's one possibility; two is, you know, all he wants to do in
16 his life is be an AUSA here, and we just didn't know that; and
17 number three --

18 **THE COURT:** That would be a life's ambition, wouldn't
19 it?

20 **MR. WEINGARTEN:** And number three, he didn't -- on his
21 questionnaire, you know, there's a specific question about
22 contact with law enforcement and whatever, and there's an
23 answer of no that's inconsistent with what you just read. So I
24 think, at a minimum, he needs to be asked about it.

25 **THE COURT:** I don't know it's inconsistent or not. I

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1 mean, I don't know. I mean, I don't know. Maybe it is. Maybe
2 it is. I mean, it's not obvious to me that because I know a
3 lawyer in the US Attorney's Office, I don't know. I could read
4 it -- I'm not disagreeing with you, okay?

5 So I got it. I -- maybe what I would do is after court
6 today is bring him out. If you have some questions that you
7 want me to ask him -- it's better that I ask him the questions
8 rather than you. You don't want to ask him questions anyway,
9 make him feel uncomfortable and so forth and I can just say,
10 look, we've been advised -- been advised that you did know --
11 you do know somebody in the US Attorney's Office, that before
12 you were selected as a juror you had some contact with him and
13 the parties want to be assured that . . . and then whatever you
14 want to know about it.

15 **MR. WEINGARTEN:** That's fair.

16 **THE COURT:** Okay. That you won't favor or whatever
17 those exact --

18 **MR. LINCENBERG:** Your Honor, may I?

19 **THE COURT:** Mr. Lincenberg, go right ahead.

20 **MR. LINCENBERG:** And I might go into a little bit. I
21 mean, when you say we know the facts I might go into a little
22 bit the conversation he had with the AUSA in 2022. My guess
23 is, this was a young guy, he's talking to him, he sees this
24 great career.

25 **THE COURT:** Okay. I can do that. It's a great

1 career. I know people who actually have their children who go
2 into the United States Attorney's Office. It's -- it's
3 possible. It's not a career ender.

4 **MR. LINCENBERG:** No, but a lot of these people decide
5 they need to move them back East.

6 **THE COURT:** I even know -- I even know of a famous
7 father who was in the United States Attorney's office in the
8 Southern District of New York. That was not a career ender for
9 him. He was able to provide for employment for his children,
10 so that was -- that's even a remarkable story, right? There
11 are a lot of them, hundreds of stories.

12 Okay. You give me some questions you would like to ask.
13 Now if -- and then I'll see okay if that's okay because the
14 answers may suggest further questions.

15 **MR. WEINGARTEN:** Good.

16 **THE COURT:** Okay. Thank you very much.

17 **MR. REEVES:** Thank you.

18 **THE CLERK:** We'll just mark this as Court Exhibit 1.

19 (Luncheon recess was taken at 12:08 p.m.)

20 **AFTERNOON SESSION**

12:48 p.m.

21 (Jurors enter courtroom.)

22 (Proceedings were heard in the presence of the jury:)

23 **THE COURT:** Okay. Let the record reflect all jurors
24 are present, parties are present.

25 You may proceed.

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1 **MR. HEBERLIG:** Thank you, Your Honor.

2 **BY MR. HEBERLIG:**

3 **Q.** Good afternoon, Mr. Vaidyanathan.

4 **A.** Good afternoon.

5 **Q.** Did I get that correct?

6 **A.** Yes.

7 **Q.** Just before we move on from the reseller revenue
8 recognition policy, are you familiar generally with the concept
9 under the IFRS of the ability to recognize revenue upon the
10 sale to a reseller as opposed to an end user?

11 **A.** Generally, yes.

12 **Q.** Okay. And I don't recall, but do you know the provision
13 of the IFRS that governs revenue recognition?

14 **A.** Not the topic, no.

15 **Q.** Okay. IAS-18, that's not a standard you're familiar with?

16 **A.** Well, I've read it in passing, not -- not actually
17 practiced it.

18 **Q.** All right. And just to follow up, if the factors under
19 IAS-18 are met upon a sale to a reseller, is it your
20 understanding that under IFRS it can be permissible to
21 recognize revenue?

22 **A.** Yes.

23 **Q.** Okay. Let me change topics and address briefly the
24 subject of potentially linked transactions?

25 **A.** Yes.

1 Q. Okay. Those are transactions, am I right, in which a
2 company sells something to a customer from which it also buys
3 something?

4 A. Yes.

5 Q. And that occurred, in your experience, at Autonomy?

6 A. Correct.

7 Q. And I believe you testified that those types of
8 transactions, because there's a buy/sell relationship with the
9 customer, need to be evaluated for potential linkage?

10 A. Correct.

11 Q. Okay. And that's why you were flagging that term.

12 Now, the prosecutor, in a couple of his questions,
13 injected the term "roundtrip" transaction, but I noted that
14 wasn't something that originally came from your answer; do you
15 recall?

16 A. Yes.

17 Q. All right. That term "roundtrip" transaction is not
18 itself a term that is defined in any of the accounting
19 standards --

20 A. No.

21 Q. -- we're talking about, right?

22 A. No, it's not.

23 Q. That's like some slang kind of term that accountants use?

24 A. Yeah, I mean, that's correct.

25 Q. And I'm correct that there is nothing wrong, as a general

1 matter, with two companies buying and selling products from
2 each other?

3 **A.** That is correct.

4 **Q.** Under the accounting rules there can be, but are not
5 always, consequences when that occurs?

6 **A.** Correct.

7 **Q.** And even if there are those consequences and transactions
8 are deemed linked, that doesn't mean it's illegal for a company
9 to buy and sell products from one another, correct?

10 **A.** Correct.

11 **MR. LEACH:** Objection, foundation.

12 **THE COURT:** Overruled.

13 **BY MR. HEBERLIG:**

14 **Q.** Let me repeat it.

15 **THE COURT:** He answered it.

16 **MR. HEBERLIG:** I'm not sure the jury heard.

17 **BY MR. HEBERLIG:**

18 **Q.** Did you say correct?

19 **A.** Yes.

20 **Q.** Okay. Not illegal, you can still buy and sell, right?

21 **A.** Correct.

22 **Q.** It's just that you might have to account for the
23 transaction differently?

24 **A.** Yes.

25 **Q.** And just like the revenue recognition standard we were

1 talking about, under the IFRS there are principles for
2 determining whether two transactions are sufficiently linked
3 that they need to be accounted for together, correct?

4 **A.** There should be.

5 **Q.** Okay. But you yourself are not familiar with what those
6 standards are?

7 **A.** No.

8 **Q.** Do you agree that the test for what is a linked
9 transaction is a fact-specific inquiry that requires judgment?

10 **A.** A linked transaction is something that is fact-specific,
11 yes.

12 **Q.** And that it requires accounting judgment to determine
13 whether in fact two transactions are linked?

14 **A.** Well, I think the how-to-account-for-it is where the
15 accounting judgment comes in. I think the fact whether they're
16 linked or not is obviously it's factual.

17 **Q.** Okay. Fair enough. So first you have to determine as a
18 factual matter whether or not two transactions are linked?

19 **A.** Correct.

20 **Q.** And then if you conclude the two transactions are linked,
21 then you need to apply accounting judgment as to how you
22 account for it?

23 **A.** Correct.

24 **Q.** Okay. And the judgment would be applied in the case of
25 Autonomy under the IFRS standards, correct?

1 A. Correct.

2 Q. So let's talk specifically about Autonomy's transactions
3 with Filetek, okay?

4 A. Sure.

5 Q. Now. Am I right that you became aware of those
6 transactions because you were in charge of accounts payable and
7 had to pay some bills to Filetek?

8 A. Yes.

9 Q. And when Autonomy bought software for Filetek, you would
10 process the payment and ensure that the relevant approvals had
11 been obtained, correct?

12 A. Correct.

13 Q. Now, you yourself did not negotiate the purchase of that
14 software from Filetek at any time, correct?

15 A. Yeah, no, I did not.

16 Q. And you did not work with either the U.K. finance
17 department or Deloitte on how to recognize revenue, if at all,
18 from those transactions, correct?

19 A. Yeah, I did not.

20 Q. And, therefore, you're not familiar with whatever work
21 papers or reports may have been provided by Deloitte to the
22 audit committee on these particular transactions?

23 A. That's correct.

24 Q. So let me direct you to June of 2010. Around that time
25 period you asked around within Autonomy to see who was familiar

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1 with this software product that Autonomy had purchased from
2 Filetek, correct?

3 **A.** Yes.

4 **Q.** Now, let me pull up a document about that.

5 **THE COURT:** This is in evidence.

6 **MR. HEBERLIG:** I don't think it is. It's Exhibit 849,
7 an email exchange between you and someone named Mike Sullivan
8 and then subsequently I believe Mr. Hogenson.

9 **THE COURT:** 849 admitted.

10 (Exhibit 849 received in evidence.)

11 **THE COURT:** It's tab 3.

12 **MR. HEBERLIG:** Oh, yes. Thank you. I will try to say
13 that every time. Thank you.

14 **BY MR. HEBERLIG:**

15 **Q.** Let's start with your email first, down at the bottom.

16 Sorry, Bret.

17 All right. So this is you to Mike Sullivan, June 8th,
18 subject line, software purchased, correct?

19 **A.** Yes.

20 **Q.** And you ask him, in sum and substance, about a large
21 software license purchase from a company called Filetek,
22 correct?

23 **A.** Yes.

24 **Q.** And then if we go up to Mr. -- first of all, Mr. Sullivan,
25 he worked for Zantaz, correct?

1 A. That's correct.

2 Q. And that was one of those five American businesses of
3 Autonomy, right?

4 A. Correct. Correct.

5 Q. All right. Let's go to Mr. Sullivan's response, please.

6 Mr. Sullivan responded later that same day to you: "I am
7 not aware of this. We don't use it for EDD."

8 Now, first of all, let me pause there.

9 EDD is a part of Zantaz that stands for eDiscovery; is
10 that correct?

11 A. Yes.

12 Q. And that was the part of the Zantaz business that sold
13 software to companies that had big litigation needs or other
14 requirements that have a solution that allowed the storage and
15 searching of documents, correct?

16 A. Correct.

17 Q. That was Zantaz's EDD product?

18 A. That is right.

19 Q. And that's where Mr. Sullivan was focused, right?

20 A. Yeah.

21 Q. All right. And he says, in his response to you: While we
22 don't use it for EDD, I'm checking with the DigitalSafe team,
23 right?

24 A. Yes.

25 Q. And that is essentially the other half of Zantaz; is that

1 correct?

2 A. Yes, the other product, correct.

3 Q. The other part, maybe it's not half.

4 But that was the portion of Zantaz that sold a product
5 known as DigitalSafe?

6 A. Correct.

7 Q. And that was used to archive and store and allow to be
8 searched big data, right?

9 A. Right.

10 Q. Typically from a financial institution or other large
11 company?

12 A. Correct.

13 Q. And some of those financial institution companies hosted
14 their data with Zantaz, correct?

15 A. Mm-hmm.

16 Q. Are you familiar with what that means?

17 A. Yes. Yes.

18 Q. Am I right that it means they had these big pools of data,
19 like emails and documents that they're required to keep for
20 regulatory purposes, and they're stored on servers that are run
21 by Zantaz, correct?

22 A. Yes.

23 Q. Okay. And that's what's known as "hosted?"

24 A. Yes.

25 Q. In broad strokes?

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1 A. In broad strokes, yes.

2 Q. And then there are some other customers of Autonomy,
3 typically a financial institution, that might use DigitalSafe
4 to host the data internally at their own company, correct?

5 A. Correct.

6 Q. Okay. Now, later in the day --

7 Let's take this one down and go to 3318, which is tab 22.

8 THE COURT: 3318 admitted.

9 (Trial Exhibit 3318 received in evidence.)

10 BY MR. HEBERLIG:

11 Q. And if we got go to --

12 THE COURT: Tab, I'm sorry, tab 22?

13 MR. HEBERLIG: Is that what I said?

14 THE CLERK: Yes.

15 THE COURT: Thank you.

16 BY MR. HEBERLIG:

17 Q. All right. And do you see at the top of this page 2,
18 that's where we sort of left off in the chain, right, where he
19 said --

20 Sorry, actually, scroll back out.

21 The one before was you asking him, as you recall, he said
22 "I'll ask around," and this is his email essentially asking
23 around?

24 A. Yes.

25 Q. And he forwards it to you, correct?

1 A. Yeah, correct.

2 Q. Let's go to the forward to you, page 1, please.

3 And, obviously, you've got this whole chain, right, when
4 you get forwarded an email, the rest of the chain follows.

5 A. Mm-hmm.

6 Q. So even though you weren't on those initial emails, they
7 came to your inbox?

8 A. Mm-hmm.

9 Q. One of the people who responded to Mr. Sullivan's inquiry
10 was named Roger Wang; do you see that?

11 A. Yes.

12 Q. Can we highlight that email?

13 Mr. Wang was the, or a, vice-president of product
14 development for Autonomy, correct?

15 A. Yeah.

16 Q. He advised Mr. Sullivan and team that the software -- and
17 again, we're talking about the Filetek software, correct?

18 A. Yeah.

19 Q. He said that it's database archiving software that we've
20 OEMed to deploy in the hosted environment, correct?

21 A. Correct.

22 Q. And then he goes on to say the first target customers are
23 Kraft and BofA, right?

24 A. Right.

25 Q. So, let me just break that down.

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1 He said "we've OEMed the software," not we plan to OEM it,
2 right?

3 A. Yes.

4 Q. All right. And "OEMed," you understand that stands for
5 Original Equipment Manufacturer?

6 A. Yes.

7 Q. So if a company like Autonomy buys someone else's software
8 and OEMs it, that means they've essentially built it into their
9 own products to sell off, right?

10 A. Yes.

11 Q. Okay. And so Mr. Wang is representing that's what
12 occurred with respect to the Filetek software; it got OEMed
13 into a product that would be deployed in the hosted
14 environment, right?

15 Now, could we go up to the next email in the chain. And
16 the next two. Thank you.

17 So Mr. Sullivan forwards it to you, this is maybe a day or
18 two later: Looks like we're using this in hosting, right?

19 A. Yeah.

20 Q. And hosting is the other part of the business we talked
21 about, the DigitalSafe part that he said he'd ask around about
22 because he doesn't really work in it normally, right?

23 A. Right.

24 Q. And you forwarded that on to Mr. Hogenson: "See Rogers
25 message below. Looks like it" -- Filetek software, correct?

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1 A. Mm-hmm.

2 Q. ... "Is actually being used in our California center."

3 A. Yep.

4 Q. "I have a call in to Roger to figure out more. I will
5 keep you posted," correct?

6 A. Correct.

7 Q. Okay. Now, you never connected with Roger, did you, on
8 this issue?

9 A. I think we -- I don't remember right now, but I would have
10 certainly reached out to Roger. Whether the conversation took
11 place or not, I don't recall.

12 Q. You don't recall?

13 A. Yeah.

14 Q. Okay. We haven't seen any record of it, and you don't
15 independently recall?

16 A. I don't recall.

17 MR. LEACH: Objection, Your Honor. Counsel is
18 testifying about what he's seen.

19 MR. HEBERLIG: I'll withdraw that half.

20 BY MR. HEBERLIG:

21 Q. You don't recall whether you spoke to Mr. Wang, okay.

22 Now, let's talk about some of the people that you didn't
23 reach out to to inquire about the Filetek software, okay?

24 A. Mm-hmm.

25 Q. We just saw there Mr. Sullivan, you did. But am I right

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1 that you never spoke with any of Autonomy's senior product
2 developers and engineers in the U.K. to find out how they were
3 using the Filetek software?

4 **A.** No, I did not.

5 **Q.** For instance, you didn't speak with a gentleman named Pete
6 Menell, right?

7 **A.** No, I did not.

8 **Q.** He was Autonomy's Chief Technology Officer; you knew that,
9 correct?

10 **A.** Yes.

11 **Q.** Okay. But you didn't speak with him?

12 **A.** No, I did not.

13 **Q.** You didn't speak with two individuals named Fernando
14 Lucini or Chris Goodfellow either, did you?

15 **A.** No.

16 **Q.** But you knew that they were two senior product developers
17 in the U.K., sort of high up in the ranks of the product
18 development team?

19 **A.** At that time, no. Chris Goodfellow I became acquainted of
20 later, not at that time.

21 **Q.** All right. And when you became his acquaintance, did you
22 understand that that's the position that he held?

23 **A.** Yeah, I knew he was senior up in the organization.

24 **Q.** So instead of those gentlemen, am I right that you spoke
25 to someone you described as a low-level IT guy in California

1 named James Gromar or Greomar (phonetic); does that ring a
2 bell?

3 A. James Greomar, yeah.

4 Q. You spoke to him, right?

5 A. Yeah, yeah, I spoke with him.

6 Q. And you described him, right, as the low-level IT guy from
7 California, right?

8 A. Yeah, because he was not senior up in the ladder.

9 Q. Right. Is it fair to say he was the guy when new
10 employees would come in, he'd sort of set up their laptops and
11 work stations. I mean, he handled IT for the company?

12 A. He was the IT guy for the Americas, yes.

13 Q. Perhaps not surprisingly he was not familiar with the
14 Filetek product, correct?

15 A. He was not.

16 Q. And you also spoke with a low-level engineer in the
17 Pleasanton Office of Autonomy named Ryan Smith, correct?

18 A. He was VP. He was not low level, in my opinion.

19 Q. Okay. And put aside his title, am I correct that you
20 spoke with a Ryan Smith in engineering in Autonomy's Pleasanton
21 office?

22 A. Yes.

23 Q. All right. And that's, again, an office here in the Bay
24 Area, not in the U.K.?

25 A. Correct.

1 Q. Am I right, he told you that Filetek software had features
2 that Autonomy did not already have in the Zantaz solution?

3 A. Correct.

4 Q. So this is the second employee who confirmed that the
5 Filetek software purchased from Filetek was both being used and
6 OEMed and had features that Autonomy didn't already have?

7 A. Yep.

8 Q. Let's look at the rest of your email exchange with
9 Mr. Hogenson. It's 3321, which is --

10 THE COURT: 3321 admitted.

11 MR. HEBERLIG: Thank you.

12 (Trial Exhibit 3321 received in evidence.)

13 BY MR. HEBERLIG:

14 Q. Tab 24. Just go to the second page first, please.
15 Actually, we can start at the first page. I think we just
16 talked about Mr. Smith.

17 So, take a look at your bottom message. This is in
18 reference to Ryan Smith, correct?

19 A. Yes.

20 Q. Okay. (As read) Now, I didn't know where it was
21 downloaded, in my conversation with Steve.

22 That's a reference to Steve Chamberlain?

23 A. That's correct.

24 Q. (As read) I was told that Pete has a writeup on the
25 justification of the purchase.

1 Pete is Pete Menell?

2 A. That's correct.

3 Q. All right. And you didn't inquire of Mr. Menell for a
4 copy of that writeup, correct?

5 A. No, I did not.

6 Q. Okay. Even though it was described as a writeup that
7 justified the purchase of Filetek software that had caused
8 these red flags for you?

9 A. Correct, I did not.

10 Q. Okay. And then I think you testified about this, that
11 Steve didn't know about the second purchase, came as a
12 surprise, and that was a reference to Mr. Chamberlain?

13 A. Yes.

14 Q. And the date of this email is June 20th, correct?

15 A. Yes.

16 Q. And so that's before the close of the second quarter of
17 2010?

18 A. Correct.

19 Q. And that second purchase had occurred about a month
20 earlier in May; do you recall that?

21 A. Thereabouts.

22 Q. Okay. So Mr. Chamberlain himself was not a sales or
23 business exec, right?

24 A. No, he's not.

25 Q. He's not the one negotiating the contracts with companies

1 like Filetek?

2 **A.** Correct.

3 **Q.** All right. And given the timing of this email, he
4 wouldn't necessarily have learned about the purchase until the
5 books are closed and the accounting is being done at the end of
6 quarter 2; is that fair?

7 **MR. LEACH:** Objection, speculation.

8 **THE COURT:** Sustained.

9 **BY MR. HEBERLIG:**

10 **Q.** Now, you referred to -- well, strike that.

11 Let's move on about 9 months later to a different exhibit
12 that the Government showed you during your direct examination.
13 And am I right that at that time you learned about a different
14 way in which Autonomy was using Filetek software?

15 **A.** Yes.

16 **Q.** Okay. And broad strokes we'll look at the document, but
17 you learned that Autonomy had resold Filetek software as part
18 of larger deals with other customers, right?

19 **A.** Correct.

20 **Q.** And in particular -- why don't we look at Exhibit 15704,
21 which is in evidence, and just highlight the top there.

22 Perfect.

23 So you recall being asked about this one on direct,
24 correct?

25 **A.** Yes.

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1 Q. So this is at the end of quarter 1, 2011, you were asked
2 to help process a payment to buy software, an additional
3 license I should say, from Filetek, so that Autonomy could sell
4 on the product, the Filetek software, to Morgan Stanley and
5 Hewlett Packard as part of larger deals, correct?

6 A. Yes.

7 Q. And Mr. Chamberlain explained in his email that the reason
8 why there needed to be an additional purchase of the software
9 is that the original licenses were only for internal Autonomy
10 use, correct?

11 A. That's what he says, yes.

12 Q. Right, like, for instance, internal use in that hosted
13 data center in California we just saw, correct?

14 A. Yep.

15 Q. Right. This was a different type of use; this was an
16 actual resale to two other companies, and Filetek sold a
17 different license so that Autonomy could do that. That's
18 what's represented in the email, correct?

19 A. Yes.

20 Q. You yourself did not negotiate the Morgan Stanley deal --

21 A. No.

22 Q. -- or the Hewlett Packard deal, right?

23 A. No.

24 Q. I'm sorry, we'll just have to not talk over each other.

25 I'll try my best.

1 A. Sorry.

2 Q. That's okay.

3 Now, the purchase price -- I don't know if we can see it
4 from this page. Why don't we look at page 5 of this exhibit,
5 down at the bottom. Just keep that number in mind, \$740,000.

6 If we scroll up, this I believe was for the Morgan Stanley
7 piece of the license; do you see that up top there?

8 A. Yes.

9 Q. All right. Now, if we go back out, please, to page 1.
10 These were attached as sort of the approval documentation,
11 right?

12 A. Mm-hmm.

13 Q. Is that your standard -- sorry, about that.

14 Is that standard you would get, when asked to process a
15 payment like this, you'd get like a little package of materials
16 that would include things like the invoice, contract, and then
17 maybe some email approvals, who authorized the purchase?

18 A. Yes.

19 Q. Because you yourself could not authorize a \$740,000
20 purchase without someone higher up in the company?

21 A. Correct.

22 Q. Okay. If we're back on this page, the request you got
23 from Mr. Chamberlain to process this said: "The approvals from
24 Andy and Sushovan are below;" do you see that?

25 A. Yes.

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1 Q. And "Andy" is a reference to Andy Kanter?

2 A. Yes.

3 Q. And "Sushovan" Mr. Hussain?

4 A. Yes.

5 Q. Now, no reference to Mike Lynch there, correct?

6 A. Yes.

7 Q. And I just want to clear up something on your testimony.

8 You talked about the need for certain approvals of expense
9 levels within Autonomy?

10 A. Yes.

11 Q. And I think at one point you said for approvals over a
12 certain level, you needed to get the approval of Kanter,

13 Hussain and Lynch, but did you really mean to say "or?"

14 A. Top of my mind it was over 10,000 you're required to, for
15 certain. I can't recall which one is which. Certainly above a
16 particular threshold we needed Mike.

17 Q. All right. Well, I assume that must have been above this
18 particular threshold of roughly \$750,000, because the approvals
19 here are from Andy and Sushovan, correct?

20 A. Yes.

21 Q. Now, you have, when you received this email, you have no
22 reason to doubt that these were real deals with Morgan Stanley
23 and Hewlett Packard that included the Filetek software, do you?

24 A. No reason to doubt it.

25 Q. And did you investigate; did you ask for copies of the

1 Morgan Stanley contract or the HP contract to confirm that
2 Autonomy was in fact selling solutions that included Filetek?

3 **A.** No, because revenue was not mentioned. I didn't ask the
4 question.

5 **Q.** Okay.

6 **A.** And because we had already done this the previous year, I
7 didn't ask.

8 **Q.** Why don't we just take a look at one of those contracts,
9 the Morgan Stanley contract, which is Exhibit 6283.

10 **THE COURT:** 6283.

11 **MR. HEBERLIG:** Tab 30.

12 Did you say "admitted?"

13 **THE COURT:** Admitted.

14 (Trial Exhibit 6283 received in evidence.)

15 **BY MR. HEBERLIG:**

16 **Q.** Just highlight the first paragraph so we can confirm this
17 was the Morgan Stanley contract with -- technically with
18 Zantaz, but Zantaz is part of Autonomy, correct?

19 **A.** Yes.

20 **Q.** And the date is March 31st, 2011?

21 **A.** Correct.

22 **Q.** That's the same date as the approval that we were just
23 taking a look at, correct?

24 **A.** Yes.

25 **Q.** And let's look at page 2 of the contract. That's a sort

1 of recitation of the -- well, go back to 1 so we could see what
2 the list is.

3 It's a listing of the various things that Morgan Stanley
4 was purchasing from Autonomy, correct?

5 A. Right.

6 Q. And there's a whole host of features related to
7 DigitalSafe, right?

8 A. Yes.

9 Q. And, again, is that archiving the things that the banks
10 would use for their emails and such?

11 A. Correct.

12 Q. Now we can go to page 2, please. And right above the
13 number 2, can you just enlarge that section?

14 So, among the capabilities that Morgan Stanley contracted
15 to purchase from Autonomy was structured data load
16 capabilities, as provided by Filetek StorHouse/RFS and RM
17 software, right?

18 A. Mm-hmm.

19 Q. Okay. And that's the software that we're talking about
20 from Filetek, correct?

21 A. Correct.

22 Q. Okay. And no reason to dispute that this is an actual
23 contract signed between Autonomy and Morgan Stanley?

24 A. No reason to dispute.

25 Q. All right. We can take that down.

1 Now, fast forward a few months later to June of 2011. The
2 Government showed you some other documents related to Filetek,
3 and I'd like to explore those.

4 Before I do, these relate to a -- some business that came
5 about as a result of an acquisition of a company called Iron
6 Mountain, right?

7 A. Right.

8 Q. And just so we all understand what we're talking about
9 there, Autonomy bought Iron Mountain or at least its digital
10 assets?

11 A. That's correct.

12 Q. Much like it had bought Interwoven a year or so earlier?

13 A. Correct.

14 Q. All right. And after Autonomy bought Iron Mountain, do
15 you recall that Iron Mountain had its own data storage
16 customers who were using a product different than DigitalSafe
17 called DRC-CM?

18 A. I don't recall that name, but, yeah, I've seen that being
19 referenced in multiple emails, yes.

20 Q. Okay. And do you recall that Autonomy, after acquiring
21 Iron Mountain and this product and customer base, was intent on
22 migrating that business to its own DigitalSafe hosting
23 environment?

24 A. Yes.

25 Q. That makes sense after an acquisition, right?

1 **A.** Correct.

2 **Q.** And the Filetek software was identified as a product that
3 could help for that migration; do you remember that?

4 **MR. LEACH:** Objection, foundation.

5 **MR. HEBERLIG:** That's why I'm asking the question.

6 **THE COURT:** Overruled.

7 **THE WITNESS:** So.

8 **THE COURT:** If he knows.

9 **BY MR. HEBERLIG:**

10 **Q.** If you know.

11 **A.** It was supposed to be for that.

12 **Q.** It was supposed to be for that, right?

13 **A.** Yeah.

14 **Q.** Now let's look at the email. This is in evidence at 1916.
15 Let's first enlarge the top email.

16 Again, this is the same pattern, right? A request comes
17 to you: We need to process a payment, and it's got a package
18 of stuff attached to it, right?

19 **A.** Correct.

20 **Q.** All right. This one is related to Filetek, correct?

21 **A.** Correct.

22 **Q.** And it's described as an extension of the existing
23 agreement -- agreement to cover DRC-CM customers; do you see
24 that?

25 **A.** Yes.

1 Q. And do you understand that that's a reference to those
2 Iron Mountain data storage customers?

3 A. Correct.

4 Q. Okay. Now, let's look at some of the backup that you
5 received.

6 If we can turn to page 4 of this document.

7 And this is a copy, it appears, am I right, of the actual
8 license that Filetek was selling to Autonomy for these
9 purposes?

10 A. Yes.

11 Q. Could we highlight the box there or enlarge it?

12 All right. Now, do you see here that the license type is
13 described as (As read) limited or restricted to use within the
14 Iron Mountain digital record center for compliant messaging, so
15 on so forth, DRC-CM, right?

16 A. Yes.

17 Q. And there are three particular customers identified:
18 Barclay's Capital, Bank of America, and Morgan Stanley, right?

19 A. Yes.

20 Q. Precisely the type of big customers, financial
21 institutions Autonomy wanted to migrate to DigitalSafe, right?

22 A. Correct.

23 Q. Now, we can take that part down.

24 Another part of the package you received was an email
25 approval, and I'd like to take a look at that. It's at page 7.

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1 And if we can start -- before you blow anything up, down
2 at the bottom is an email from Gary Szukalski, the person you
3 said you weren't familiar with from Filetek, right? We
4 actually don't need to enlarge that.

5 That email gets forwarded on by someone named Stouffer
6 Egan to Sushovan Hussain and Peter M; is that Peter Menell?

7 A. That's correct.

8 Q. The CTO?

9 A. Yes.

10 Q. All right. And this is Mr. Egan's request for approvals,
11 correct?

12 A. Yes.

13 Q. And he describes the need for this product as the
14 extension of the license to cover off the big 3 customers.

15 Do you understand that that's a reference to the 3 big
16 financial institutions we just looked at?

17 A. Yes. Yes.

18 Q. Those big 3 on the Iron Mountain product there (As read)
19 we would like to use this license for only the 6 months needed
20 to migrate or upgrade that platform.

21 Let me pause there. That's what we just talked about
22 right, trying to get the Iron Mountain stuff to Autonomy?

23 A. Correct.

24 Q. Okay. And also, his understanding is, this would save
25 considerable hardware cost.

1 Do you know what that was a reference to?

2 A. No, not really.

3 Q. Okay.

4 A. I was --

5 Q. But that was -- oh, sorry.

6 A. My assumption was he was trying to justify the -- justify
7 the purchase.

8 Q. And one way in which he might justify it, in this case a
9 \$1.5 million purchase, is just say it's saving the need to
10 spend \$3 million on hardware?

11 A. Potentially, yes.

12 Q. And that's what he's saying there, putting aside the
13 numbers?

14 A. Correct.

15 Q. Now, Mr. Egan also flags that there's a discount in the
16 contract on the software for a prompt cash payment; do you see
17 that?

18 A. Yes.

19 Q. And that was also something that from time to time would
20 be in contracts where Autonomy was buying things from
21 customers, right?

22 A. Correct.

23 Q. And a discount for prompt cash payment perhaps is common
24 sense, but a customer might say: If you can pay me this week,
25 I'll give you 5 percent off. Is that the type of discount

1 we're talking about?

2 **A.** Yeah, typically not a week, but, yeah, you're right. If
3 you pay in advance of your contracted terms, then customers can
4 give you -- vendors can give you a discount, correct.

5 **Q.** Now, let's go out of this one and go, please, to page 6.

6 The same email just further on showed approval from Mike
7 Lynch for this purchase, correct?

8 **A.** Yes.

9 **Q.** And I think that may have been reviewed with you on your
10 direct examination?

11 **A.** Yes.

12 **Q.** Can we enlarge that?

13 And after this whole chain gets forwarded to Mike Lynch, a
14 lot of the information about the migrating and why we're using
15 the software, he approves it and he says: "Okay, as long as
16 we're selling it on," correct?

17 **A.** Correct.

18 **Q.** And "selling it on" you understood to mean using what
19 we're buying to sell to other customers?

20 **A.** That is correct.

21 **Q.** We could take this one down.

22 We'll move to the next document the Government showed you
23 related to Filetek also concerning Iron Mountain.

24 **A.** Mm-hmm.

25 **Q.** This is just a few months later in August of 2011, okay?

1 A. Okay.

2 Q. Do you recall around that time Iron Mountain had a
3 different product that was known as LiveVault?

4 A. I don't recall.

5 Q. Maybe searching the archives of your vault.

6 Well, let me see if I can refresh your memory from the
7 document.

8 I think this was admitted as 15992. And, again, similar
9 pattern, right? The first email in the chain is to you with
10 instructions on how to process a wire to Filetek?

11 A. Mm-hmm.

12 Q. And we can see that there's an attachment to the email
13 that was the backup support that you needed to approve the
14 wire?

15 A. Correct.

16 Q. All right. I'd like to take a look at some of that
17 backup. Let's start, please, with page 8 of the backup. Bear
18 with me one sec. All right. It's actually the very top email
19 on this page, so I think we have to go to 7 to see who is
20 writing it. Thank you.

21 Okay. I want you to focus on the email at the top there.

22 MR. HEBERLIG: Maybe we can enlarge that, Bret, all
23 the way down, please, to capture his -- capture the email.

24 BY MR. HEBERLIG:

25 Q. All right. So this is mid-August of 2011, Mr. Hussain

1 writing to handful of people, including Dr. Lynch, Andrew
2 Kanter, Stouffer Egan, Peter Menell, right?

3 A. Yes.

4 Q. And it's about the approval to expand Filetek to the IRM
5 data centers; do you see that?

6 A. Yes.

7 Q. And you know that IRM stands for Iron Mountain?

8 A. Iron Mountain.

9 Q. Okay. And in sum and substance he says (As read) we've
10 completed the negotiations. Based on the digital run rate
11 revenues of around 150 million a year, the final number is
12 approximately -- I'm sorry, the final number which is
13 approximately 7 million is fine, and so on and so forth; do you
14 see that?

15 A. Yes.

16 Q. And did you understand there that he was estimating that
17 the product would lead to in the neighborhood of \$150 million
18 in revenue?

19 A. Yes.

20 Q. Okay. For which they're paying \$7 million?

21 A. For the software, yes.

22 Q. Okay. So not a bad business deal, if those terms are
23 correct?

24 A. Yeah.

25 Q. And if we go to page 7, Mike Lynch also responds here.

1 His message is (As read) Yep, if this gets their zero op margin
2 stuff to our architecture, right?

3 A. Yes.

4 Q. And did you understand that to mean Iron Mountain was
5 hosting this product in a low-profit environment that Autonomy
6 wanted to migrate its own architecture?

7 A. Correct.

8 Q. Okay. And if the product got migrated to Autonomy's
9 architecture, Autonomy ran DigitalSafe a healthy profit,
10 correct?

11 A. Correct. Correct.

12 Q. So good business. Take zero margin stuff we just bought,
13 transfer it over to high margin Autonomy data centers, and if
14 these numbers are correct, pay 7 million to get 150; is that
15 what's going on here?

16 A. Yep.

17 Q. Okay. And you have no reason to doubt the commercial
18 justifications that you were provided in these emails, correct?

19 A. That's correct.

20 Q. All right. We can take that down.

21 Now, a little bit on the -- your testimony regarding the
22 price of the software from Filetek.

23 A. Mm-hmm.

24 Q. And, actually, even before we get to the price, I think
25 you described it as somewhat of an oddity that Autonomy would

1 buy software from a party like Filetek. Do you recall that
2 testimony?

3 A. Yep.

4 Q. And you characterized Filetek as a reseller?

5 A. Yes.

6 Q. But Filetek was a company that also manufactured software
7 like StorHouse, correct?

8 A. Yeah, I didn't -- yes. Yes.

9 Q. You weren't familiar with Filetek, correct?

10 A. I wasn't familiar with Filetek.

11 Q. It was not Microsoft?

12 A. It was not Microsoft, certainly.

13 Q. Okay. But it did produce software, right?

14 A. Mm-hmm.

15 Q. And as we've just walked through, it was software that
16 Autonomy represented it had a need for in various capacities in
17 its business?

18 A. Yes.

19 Q. Now, you opined, I believe, that you thought the price of
20 the software was high; is that right?

21 A. Yes.

22 Q. Okay. And at the time of these events, am I right that
23 you had worked at three software companies, including Autonomy
24 being one of them?

25 A. Yes.

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1 Q. Okay. And you yourself are not a software developer, are
2 you?

3 A. I'm not.

4 Q. Okay. And you're not a software engineer?

5 A. No.

6 Q. Okay. And you understand, however, from your familiarity
7 with the business, that Autonomy could have tried to develop
8 its own software to do the same sort of functionality as
9 StorHouse, right?

10 A. Correct.

11 Q. That's always an option for a software company?

12 A. Yeah.

13 Q. But to do so Autonomy would have had to devote engineering
14 manpower, right?

15 A. Correct.

16 Q. It would have had to take away its creative software
17 engineers working on IDOL and SPE and all these other products
18 to make these StorHouse connectors?

19 A. Correct.

20 Q. And that would have cost time and money, right?

21 A. Right.

22 Q. So a different alternative for a company in Autonomy's
23 position could be to buy the software from a company that
24 already produced it?

25 A. Correct.

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1 Q. And that sort of commercial strategy is not rare. Those
2 are decisions that software businesses make every day?

3 A. Yeah, make to buy always -- you always make a decision.

4 Q. Correct. Now, when you were asking around about these
5 Filetek purchases, you obtained a copy of the relevant
6 contracts, correct?

7 A. Of this contract, yes.

8 Q. Okay. And the contracts had information in them about the
9 pricing for the purchase of the software?

10 A. Correct.

11 Q. All right. Let me see if we could take a look at one of
12 those. It's Exhibit 3321.

13 THE COURT: 3321 admitted.

14 (Trial Exhibit 3321 received in evidence.)

15 MR. HEBERLIG: Tab 24. That is actually an email.
16 Bear with me one second.

17 THE COURT: Yeah.

18 BY MR. HEBERLIG:

19 Q. My apologies. I guess while it's up, this is an email
20 that confirms that you forwarded the contract to Mr. Hogenson;
21 do you see that at the top there.

22 A. Yes.

23 Q. Okay. So just consistent with your recollection, you did
24 obtain a copy of the contract in the relevant period?

25 A. Yes.

1 Q. All right. Let's actually go to the contract now, which
2 is 4357.

3 THE COURT: 4357 admitted.

4 (Trial Exhibit 4357 received in evidence.)

5 BY MR. HEBERLIG:

6 Q. And that's tab 27.

7 All right. Sorry, this appears to be the contract, right,
8 between Autonomy and Filetek, right?

9 A. Mm-hmm.

10 Q. And this is the first one at the end of December 2009?

11 A. Yes.

12 Q. Okay. Let's go to page 15, please, and this is the
13 pricing information, first of all.

14 MR. HEBERLIG: Can you just highlight the middle
15 section there, Bret?

16 BY MR. HEBERLIG:

17 Q. That's the number we've talked about. I think it was in
18 some of the other documents, roughly 7.5 million for the
19 software?

20 A. Mm-hmm, yes.

21 Q. For which Autonomy received a discount of 45 percent; do
22 you see that?

23 A. Yes.

24 Q. So a discount of 6 million, taking it down from 13,5
25 essentially to 7,5?

1 A. Yep.

2 Q. Okay. Now, let's go to the next page and talk about what
3 Autonomy was buying for this, and if we could just highlight
4 those additional terms and conditions.

5 All right. So am I correct that the pricing, number one,
6 it reflected a five-year term of use of the software, right?

7 A. Yes.

8 Q. And it was for Autonomy's Zantaz customers, right? And,
9 again, those are the DigitalSafe customers --

10 A. Correct.

11 Q. -- who host their data with Zantaz?

12 A. I didn't know at that time, but, yeah.

13 Q. And what this represents is for each of those
14 approximately 60 customers who own -- you see there 166 TB; do
15 you recognize that to be terabytes of data?

16 A. Yes.

17 Q. The product could be used with all of them, right? I'm
18 sorry?

19 A. I didn't get the question.

20 Q. Sorry. So this is reflecting the terms that the license
21 was for the Zantaz customers and their data effectively, right?

22 A. Correct. Correct.

23 Q. Okay. And among other things it talks about -- it's for
24 the management of 10 PB of primary file data, and so on; do you
25 see that?

1 **A.** Yes.

2 **Q.** And do you recognize "PB" to be an abbreviation for
3 petabyte?

4 **A.** Yes.

5 **Q.** Okay. So at the time, this Autonomy had one of the
6 largest data clouds in the world, correct; do you remember
7 that?

8 **A.** Not that I'm aware of.

9 **Q.** Do you remember a data cloud in the neighborhood of 10 to
10 17 petabytes of data?

11 **A.** I've heard those numbers, but whether that was the largest
12 in the world at the time, I have no idea.

13 **Q.** All right. And just to put that in perspective, a
14 petabyte is a thousand terabytes or a million gigabytes,
15 correct?

16 **A.** Yeah.

17 **Q.** Okay. And so the pricing of the software was geared
18 towards the size of data that it was going to be used for,
19 correct?

20 **A.** That's what this appears to suggest, yes.

21 **Q.** And you yourself have no experience pricing software that
22 could be used to manage data in such a large data cloud, do
23 you?

24 **A.** No. Typically we've seen pricing with -- in terms of
25 bytes and terabytes and petabytes, but not this type, no.

1 Q. Okay. Now, we can take that down.

2 There's a second purchase from Filetek on May 10th of
3 2010, and let's just briefly look at that contract as well,
4 which was 7813.

5 MR. HEBERLIG: I don't believe it's in yet, Judge.
6 That's tab 41.

7 THE COURT: 7813 admitted.

8 (Trial Exhibit 7813 received in evidence.)

9 BY MR. HEBERLIG:

10 Q. All right. And, again, let's just highlight the pricing
11 information first.

12 The second purchase, again, you reviewed this on direct.
13 This is for 8.2 million, correct?

14 A. Yes.

15 Q. And let's just see what the differences were --

16 Well, before we move on. Again, 45 percent discount off
17 the total, right?

18 A. Mm-hmm.

19 Q. And there's one of those early pay discounts of 2 percent,
20 right?

21 A. Correct.

22 Q. So if Autonomy chose to, it could pay this bill early and
23 it would reap savings of \$167,000?

24 A. That's correct.

25 Q. All right. Let's look at the terms and conditions on the

1 next page. And just enlarge those for a moment.

2 All right. So the difference is this proposal now, as
3 compared to the last one, is geared toward the expanding
4 information growth of the Zantaz customers, and it permits the
5 use of the product within the DigitalSafe environment. There
6 doesn't appear to be any limitation on the number of customers
7 like we saw in the last contract, correct?

8 **A.** Yes.

9 **Q.** All right. And, likewise, this also talks about unlimited
10 capacity restrictions, so not even limited anymore by that 10
11 petabyte restriction. However much data Autonomy brings in,
12 they can use Filetek, correct?

13 **A.** Yes.

14 **Q.** Okay. And that's what you understood the differences to
15 be between the two contracts?

16 **A.** That's my recollection.

17 **Q.** And we can take this down and go back to the first page,
18 which was you I believe forwarding this information to
19 Mr. Hogenson.

20 And I'm sorry, that's a different exhibit, which is 7875,
21 which is tab 43 and not yet in evidence.

22 **THE COURT:** 7875 admitted.

23 (Trial Exhibit 7875 received in evidence.)

24 **BY MR. HEBERLIG:**

25 **Q.** Okay. Can we just enlarge the top? Thank you.

1 All right. So, again, we're in the late June time frame?

2 A. Mm-hmm.

3 Q. Both Filetek purchases have already occurred, and this is
4 you forwarding information to Mr. Hogenson, correct?

5 A. Correct.

6 Q. And as an attachment Filetek.pdf?

7 A. Yes.

8 Q. All right. Let's take a look at that information.

9 Go to, please, the attachment, which is 7875.1, 7875.1.

10 It's just the attachment to this email.

11 **THE COURT:** Okay. Admitted.

12 (Trial Exhibit 7875.1 received in evidence.)

13 **MR. HEBERLIG:** Thank you.

14 **BY MR. HEBERLIG:**

15 Q. And, again, this is another sort of package of
16 information. I'll just scroll through it quickly. But first
17 one here appears to be the confirmation of the payment,
18 correct?

19 A. Correct.

20 Q. Let's go to the next page. That's the invoice for the
21 payment, correct?

22 A. Yes.

23 Q. Okay. Let's go to the approval emails again, and I'd like
24 to start on page 7. And on page 7 can we focus on the email
25 from Joel Scott to Mr. Hussain and Dr. Lynch.

1 All right. So this appears to be back and related to the
2 second purchase of Filetek, correct, based on the date of the
3 email?

4 **A.** Correct.

5 **Q.** Okay. And this is presented from Mr. Scott to Mr. Hussain
6 and Mr. Lynch.

7 Who was Mr. Scott again?

8 **A.** Mr. Scott is the -- he was the general counsel for
9 Autonomy in the U.S. and the UCO of the U.S. as well.

10 **Q.** All right. And he's explaining here that he wants their
11 approval for this purchase, correct?

12 **A.** Correct.

13 **Q.** And let's go to what Mr. Hussain's initial response was
14 just above.

15 All right. Now, his response was (As read) I need to
16 analyze this a bit more. It's a large deal. Can you give me
17 more justification.

18 Is that essentially what he's saying there?

19 **A.** Yes.

20 **Q.** And Mr. Scott does, correct? Let's look at the next email
21 in the chain. I won't get into the details, but after that
22 explanation how does Mr. Hussain then respond? Let's take a
23 look.

24 All right. He's summarizing the deal here, and among the
25 reasons he gives for his approval, am I correct, he says (As

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1 read) Given that the alternative would have been to buy
2 Filetek, probably for a hundred million, this seems worthwhile
3 to me. It's rare for us to buy an OEM license, but given the
4 success of SPE and the first Filetek purchase, I'm okay.

5 That's what Mr. Hussain said, correct?

6 A. Yes.

7 Q. Were you familiar with the SPE product?

8 A. Not really, no.

9 Q. Do you know what SPE stood for?

10 A. No.

11 Q. Okay. So let's scroll up then and see if Mike Lynch
12 approved the purchase.

13 So this is what Mike Lynch said. It referred to a
14 conversation with Pete. And, again, you recognize that to be
15 Pete Menell?

16 A. Yes.

17 Q. The CTO. They spoke about, according to this email, the
18 first bit of tech; do you see that?

19 A. Yes.

20 Q. And do you interpret that to mean the first purchase of
21 the Filetek software --

22 A. Mm-hmm.

23 Q. -- that Mr. Menell had been using, correct?

24 A. Yes. Yes.

25 Q. Mike also referred to a bank -- well, BAML deal; do you

1 see that?

2 A. Yes.

3 Q. Do you know if that stands for Bank of America or --

4 A. In some places its referred to as BofA and some places
5 BAML, but I guess it's the same thing.

6 Q. Okay. (As read) Refer to a deal with them worth 35, and
7 says, I guess it will look like small beer by comparison with
8 the 2 billion we're thinking of in this area, so okay then
9 despite my dislike of spending money.

10 And that's the approval he gave, correct?

11 A. Yes.

12 Q. And these were the real-time approvals that you gathered
13 up and sent to Mr. Hogenson, correct?

14 A. Correct.

15 Q. These were not emails prepared after the fact, after
16 Mr. Hogenson started raising questions about the Filetek
17 transaction, correct?

18 A. That's correct.

19 Q. From the date of these emails these were sent before
20 Autonomy agreed to buy Filetek software, right?

21 A. Buy the product, yes.

22 Q. Buy the what?

23 A. Buy their product, yes.

24 Q. I'm sorry, I just had a hard time understanding.

25 A. Buy their product.

1 Q. Buy the product, yeah.

2 A. Yeah.

3 Q. Okay. You have no personal information that contradicts
4 the commercial justifications that are given in these
5 approvals, do you?

6 A. No.

7 Q. And am I correct that nowhere in any of these messages
8 we've been reviewing did anyone say, hey, Filetek owes us a lot
9 of money, so it would be great to make up a reason to pay them
10 for something?

11 A. No.

12 Q. We didn't see that anywhere in all of those approvals we
13 went through, correct?

14 A. No.

15 Q. We can take that down.

16 When you had conversations with Mr. Chamberlain about
17 Filetek, did you ever ask him whether Deloitte had assessed the
18 fair value of the purchases?

19 A. When we talked about resellers in general --

20 Q. No, I'm talking about the Filetek software. We're on the
21 topic of your opinion that the Filetek software was overpriced?

22 A. Yeah, yeah, yeah.

23 Q. Did you -- when you discussed that with him, did you ever
24 ask him, hey, did Deloitte assess the fair value of that
25 software?

1 **A.** Yeah, typically auditors don't assess the fair value of
2 any software that you buy, so I didn't ask them about that in
3 specific. The auditors always check whether they have the
4 right documentation for a price for a software that was
5 purchased, and whether that software is being used. They would
6 not typically comment on whether it was overpriced or
7 underpriced.

8 **Q.** So your understanding is under the IFRS it was not
9 relevant whether the products that were being purchased were at
10 fair value?

11 **A.** Eventually at the end of the day when you look at your
12 assets and liabilities, and you look at software in general,
13 they would ask you for an overall sort of estimation, whether
14 they were impaired or not. They would not ask you specifically
15 about individual software purchases.

16 **Q.** How about if an accountant was assessing whether there was
17 a linked transaction, which is, after all, the questions you
18 had about these deals, right?

19 **A.** Correct. Correct.

20 **Q.** In making that assessment, isn't a key question whether
21 you're paying fair value for what you're getting?

22 **A.** The assessment in making the linkage decision is about
23 whether those, A, whether those contracts are being made by the
24 same person, that is one; and the second is whether the amounts
25 are intricately linked one way or the other; and third, more

1 importantly is about whether one drove the -- one drove the
2 other transaction.

3 Q. And yet another factor, am I right, and you can correct me
4 if I'm wrong, is you want to make sure there's fair value.
5 Because if two people are buying things in a linked
6 transaction, and the things are worth 5 million and they say
7 I'll pay a hundred million for it, that could lead to an
8 artificial recognition of revenue, right?

9 A. Correct.

10 Q. So fair value is important in assessing whether two
11 transactions are linked?

12 A. Well, tangentially, yes. You would look at everything
13 together, but, yes.

14 Q. Okay. And so back to my original question: Did you ever
15 ask Mr. Chamberlain whether Deloitte had conducted a fair value
16 analysis of the Filetek software?

17 A. Individually for these transactions, no.

18 Q. Did you ever ask him if Autonomy in the U.K. finance
19 department had conducted a fair value analysis of the Filetek
20 software?

21 A. Not specifically on Filetek. On oral resellers, yes.

22 Q. Did you ask him whether Autonomy had solicited information
23 from other customers to compare how they priced things similar
24 to Filetek, anything like that?

25 A. No.

1 Q. Now, just one more question about this situation. We've
2 seen -- one more topic I should say.

3 We've seen that Autonomy and Filetek bought and sold
4 software between the companies, correct?

5 A. Correct.

6 Q. And at different times each company owed the other money,
7 right?

8 A. Right.

9 Q. And there were times when both companies owed each other
10 money?

11 A. Yeah.

12 Q. Okay. And there are, correct me if I'm wrong, commercial
13 reasons in a scenario like that where Autonomy might want to
14 pay its debt quickly to entice a prompt payment in return?

15 A. Potentially.

16 Q. Are you familiar with a statistic known as Days Sales
17 Outstanding, or DSOs?

18 A. Yes.

19 Q. Am I right, that's a statistic that measures how long it
20 takes a company to get its bills paid?

21 A. Yes.

22 Q. And that's something that like just about every company
23 Autonomy reported to the market?

24 A. Well, I don't know whether they reported to the market or
25 not, but it's a metric that almost every company measures and

1 it's measured on.

2 Q. And you expect it to be in their financial statements,
3 right?

4 A. It never would be in the financial statements.

5 Q. In their disclosures, the annual reports?

6 A. There's no legal requirement to disclose it. If you chose
7 to disclose it, great.

8 Q. Are you aware one way or another whether Autonomy did
9 disclose it?

10 A. In their earnings call they might have.

11 Q. Okay. And am I right that the faster Autonomy's customers
12 pay their bills, the lower their DSOs are?

13 A. Correct.

14 Q. Okay. So as a general matter it certainly was in
15 Autonomy's interest to get its bills paid quickly?

16 A. Yeah, that's correct.

17 Q. All right. Let me ask you a few questions about a
18 different company.

19 A. Mm-hmm.

20 Q. DiscoverTech. You recall some questions about
21 DiscoverTech in your direct examination?

22 A. Yes.

23 Q. And it was another reseller that Autonomy did business
24 with?

25 A. Yes.

1 Q. I think you testified about a \$4.4 million payment to
2 DiscoverTech end of June 2010; do you remember that?

3 A. Yes.

4 Q. All right. Let's take a look at that document, which I
5 believe is in evidence at 11 -- 11934.

6 THE COURT: 11934 is in evidence.

7 MR. HEBERLIG: Yes, thank you.

8 BY MR. HEBERLIG:

9 Q. Okay. So, again, this is end of June, 2011, another one
10 of those packages that came your way for the payment to be
11 processed with the backup, right?

12 A. Yes.

13 Q. And why don't we start with scrolling through the
14 attachments. Let's look at page 3.

15 This is the contract that you're being asked to pay,
16 correct?

17 A. Yes.

18 Q. All right. Let's jump all the way ahead to page 13 with
19 one of these email approval documents.

20 And if we can blow up maybe the first half, including
21 Mr. Chamberlain's email.

22 All right. This is relating to that payment, both
23 directed at Sushovan Hussain and Mike Lynch: "Need your
24 approval to proceed on this," right?

25 A. Yes.

1 Q. Okay. And Mr. Hussain approves based on discussions with
2 Stouffer, and he says: "The resale value on a number of our
3 strategic accounts."

4 A. Yes.

5 Q. Okay. And this related to a software product called
6 DiscoverPoint; do you remember that?

7 A. Not, not completely, but --

8 Q. So you're not familiar with the DiscoverPoint software
9 product --

10 A. I don't recall at this point.

11 Q. Really sorry, but you have to let me finish my question.

12 A. Sorry.

13 Q. Are you familiar with the DiscoverPoint software product
14 that Autonomy purchased from this company?

15 A. I wasn't familiar at the time.

16 Q. Unfamiliar?

17 A. Unfamiliar.

18 Q. Okay. Let's look at Mike Lynch's approval; that was in a
19 separate email, 3564, which is tab 25 not yet in evidence.

20 THE COURT: 3564 admitted.

21 (Trial Exhibit 3564 received in evidence.)

22 BY MR. HEBERLIG:

23 Q. And just quickly at the top there, do you see that Mike
24 also approved, as long as we're selling through, right?

25 A. Yeah.

1 Q. And do you understand that to be a reference to reselling
2 the product on to other customers?

3 A. Correct.

4 Q. Okay. And, again, from real time you have no reason to
5 believe that these commercial justifications were incorrect?

6 A. That's right.

7 Q. Do you know whether Autonomy in fact sold the software on
8 as part of larger package deals with customers?

9 A. No.

10 Q. Okay. Did you understand that that was the intent behind
11 this?

12 A. That was the intent.

13 Q. Okay. All right. We can take that down.

14 A few questions about the company VMS; do you remember
15 those -- that topic coming up in your Direct?

16 A. Yes.

17 Q. All right. Now, your testimony I believe was that VMS was
18 a reseller?

19 A. Yes.

20 Q. Okay. Were you aware that VMS was in fact a world leader
21 in the provision of content to its customers in the form of
22 data feeds that would consist of web sites and blogs and
23 newspapers and the like?

24 A. No.

25 Q. So where did you get this understanding that VMS was a

1 reseller?

2 **A.** VMS -- there was two contracts with VMS. There was one a
3 buy contract and then there was a sell contract, so I inferred
4 that there was -- they were a reseller.

5 **Q.** So you inferred that they were a reseller solely by virtue
6 of the fact that we sold something to them and they bought
7 something from us?

8 **A.** Yes.

9 **Q.** Okay. Were you aware at all of Autonomy's history with
10 VMS's commercial history?

11 **A.** No.

12 **Q.** Any knowledge whatsoever about Autonomy considering buying
13 the company back in 2007?

14 **A.** No.

15 **Q.** Okay. Just a blank slate on that topic?

16 **A.** Yeah.

17 **Q.** Would you agree with me that your conclusion that it was a
18 reseller was just an inference from the buy/sell?

19 **A.** It was an inference.

20 **Q.** You actually don't know that to be the case, right?

21 **A.** I don't.

22 **Q.** You spent some time testifying about a 4th quarter end of
23 the year transaction in 2010 regarding this fixed asset
24 register; do you remember that?

25 **A.** Yes.

1 Q. Okay. Let's just pull up that document briefly. It's in
2 evidence as Exhibit 1428.

3 First of all, am I right that Mike Lynch was not copied on
4 any of these emails?

5 A. I don't remember that.

6 Q. You don't recall the prosecutor showing you an email in
7 Direct with Mike Lynch being in the middle of this issue of
8 what's in the warehouse, what isn't?

9 A. No, I don't remember that off the top of my head, no.

10 Q. And so you don't have any evidence that he was aware of or
11 involved in any of these discussions about how to fulfill the
12 VMS contract?

13 A. No.

14 Q. Okay. And in your experience, the details of delivery and
15 inventory and stock are not typically the things that the CEO
16 of the company would be focused on?

17 MR. LEACH: Objection, foundation.

18 THE COURT: Sustained.

19 BY MR. HEBERLIG:

20 Q. Now, let's take a quick look at 15575 in evidence, and
21 this was the exchange about the fixed asset register; do you
22 see that?

23 Let's just enlarge the top one.

24 Do you recall your testimony about this?

25 A. Yes.

1 Q. And if I have the issue correct, I think you put it the
2 questions you had were how Autonomy was able to fulfill this
3 particular hardware order with things from the fixed asset
4 registry?

5 A. Yes.

6 Q. Okay. Now, and I won't go to the spreadsheet, but do you
7 recall it listed a bunch of equipment, correct?

8 A. Correct.

9 Q. And I think you said that one scenario you didn't know was
10 that there was some equipment in there that had been newly
11 acquired, perhaps even still in the box, right?

12 A. I wouldn't say that. I would say that we installed,
13 because if you were in -- if you were -- if it's in the fixed
14 asset register, it basically means that it's been put to use.
15 It could have been unboxed; it could have been plugged in.

16 Q. So you don't know from going to the warehouse or the --
17 where the fixed assets were, whether these in fact were used
18 products or not; you don't have any personal observation?

19 A. No, no, but the accounting, the way this would work was
20 you would not put anything in fixed assets unless you had a
21 date of installation.

22 Q. Typically, right?

23 A. Yes. Yes.

24 Q. Okay. Now, let's just look at the contract real quickly
25 that the Government showed you, and that's Exhibit 1428 in

1 evidence. Oh, I'm sorry, and it's page 7.

2 Do you recall going through this in your Direct?

3 A. Yes.

4 Q. And this is an example of a contract where Autonomy was
5 selling hardware to VMS with the expectation that it would be
6 loaded with software, right?

7 A. Yes.

8 Q. And we can see that from the language here in 2 and 2A,
9 that the hardware was being sold to VMS, and the expectation is
10 it would be loaded with Autonomy software, right?

11 A. Well, it says it may be delivered as bought off or
12 otherwise embedded in, yes.

13 Q. And part of the documentation you saw is there was a --
14 this was the \$6 million hardware contract. There was also a
15 parallel \$5 million software sale, Autonomy to VMS at the same
16 time?

17 A. Correct.

18 Q. And you understood that they were going to be used
19 together, right, at VMS?

20 A. Yes.

21 Q. Okay. Now, I'll come back to this topic, but under your
22 definition would that constitute an appliance or not?

23 A. If you sold hardware to a customer and then you sold
24 software to a customer, and then you'd put that together at
25 some point in time, whether at the customer's premises or your

1 premises, that could constitute an appliance, correct.

2 Q. Okay. So this arrangement at least appears to be
3 consistent with your understanding of an appliance?

4 A. Correct.

5 Q. Let's go to MicroLink. We can take that down.

6 You recall testifying about Autonomy's acquisition of a
7 reseller named MicroLink?

8 A. Yes.

9 Q. Okay. And I'm going to get to the documents, but just to
10 sort of frame this discussion. You were shown a document that
11 reflected certain intercompany writeoffs; do you remember that?

12 A. Yes.

13 Q. And on a high level we're going to get to the details, but
14 it would appear that you were suggesting that Autonomy acquired
15 this reseller company MicroLink in order to be able to write
16 off its debts to MicroLink or from MicroLink?

17 A. Typically when you acquire a company, you write off the
18 intercompany. And if a company -- if you acquire a company
19 that owes debt to you, ideally that is extinguished on
20 acquisition.

21 Q. And I just want to make sure I'm clear. I was a little
22 confused by your testimony.

23 Were you stating that it was your understanding that that
24 was the purpose of the acquisition or was just something that
25 could have happened?

1 **A.** No, you typically don't -- well, typically you don't
2 acquire resellers. I haven't seen too many companies acquiring
3 resellers.

4 So the construct of a company acquiring a reseller, one of
5 the rationales for that could be to basically get rid of the
6 inter-company debt.

7 **Q.** All right. And let me just pick up on what you said.

8 So it's somewhat rare for a company like Autonomy to
9 purchase a reseller, correct?

10 **A.** Correct. Correct.

11 **Q.** But in this instance you knew, did you not, that MicroLink
12 handled a number of secret classified deals for Autonomy with
13 U.S. Federal Government customers?

14 **A.** Yes.

15 **Q.** Do you recall that?

16 **A.** Yes, it had a bunch of government customers, yes.

17 **Q.** And to handle that work, MicroLink had a number of
18 employees with United States security clearances, correct?

19 **A.** Yes.

20 **Q.** And those types of security clearances are generally
21 difficult to obtain, correct?

22 **A.** Yes.

23 **Q.** And they're particularly difficult to obtain for foreign
24 nationals, are they not?

25 **A.** Maybe, I don't know. Might be.

1 Q. Or a foreign company like Autonomy?

2 A. Yeah, possibly.

3 Q. So one alternative motive for the acquisition could have
4 been to acquire those classified assets that Autonomy was to
5 that point doing business through MicroLink as a reseller?

6 A. Possibly.

7 Q. But you don't know because you weren't privy to the
8 discussions about why Autonomy was buying MicroLink, right?

9 A. Correct.

10 Q. Now, let's take a look at, in evidence, Exhibit 816, which
11 is that spreadsheet the Government reviewed with you.

12 A. Mm-hmm.

13 Q. And if we can enlarge as much as we can -- keep going a
14 little bit if you don't mind.

15 Okay. This is the document you reviewed with the
16 Government, correct?

17 A. Yes.

18 Q. And just to orient what we're looking at, in column B,
19 customer name, MicroLink, that was Autonomy's customer, right?

20 A. Yes.

21 Q. This is a reflection of sort of the pre-acquisition state
22 of affairs?

23 A. Yes.

24 Q. Column D appears to be the end users to which MicroLink
25 was selling the product, correct?

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1 **A.** Yes.

2 **Q.** Okay. And then we see dollar amounts and the like.

3 I just want to focus on some of those end users for a
4 moment.

5 Can we start -- well, first of all, the Government, I
6 think, highlighted to you in row 6 the United States Air Force.

7 **A.** Yes.

8 **Q.** That was one of the MicroLink customers, correct?

9 **A.** Yeah.

10 **Q.** And then in line 9, we see something called JIC PAC, Joint
11 International Ctr. Do you recognize that as a reference to the
12 Joint Intelligence Center for the Pacific, an organization that
13 is dedicated to military intelligence?

14 **A.** I didn't recognize that, but must be, on the form.

15 **Q.** What about line 11, there it just says U.S. Federal
16 Government. Any idea whether that was -- what agency we're
17 talking about there?

18 **A.** No, just says U.S. Government, so . . .

19 **Q.** Just a neutral -- what about line 17, so this is another
20 customer of Autonomy through MicroLink, Geospatial Intelligence
21 A; is that another government intelligence organization?

22 **A.** I have no idea.

23 **Q.** You just don't know?

24 **A.** I don't know.

25 **Q.** Okay. Line 20, Naval Commander SU, are you familiar with

1 what they do?

2 **A.** No, it appears to be a government agency.

3 **Q.** Just two more. Line 28, Defense Intelligence, similar,
4 appear to be one of these classified contracts?

5 **A.** Yeah.

6 **Q.** And the last one, line 29, the Naval Criminal
7 Investigative Service, do you recognize that from the TV show
8 NCIS?

9 **A.** Yeah.

10 **Q.** And there are also some other federal government agencies
11 on the list that appear to be unclassified, right, like the
12 postal service in line 10, IRS in line 25; do you see that?

13 **A.** Yeah.

14 **Q.** Federal Reserve, line 27, and, lastly, the U.S. Department
15 of State in line 37; did I get those correct?

16 **A.** Yes.

17 **Q.** And it's your understanding that these were all U.S.
18 Government agencies, some classified, some not, either sold to
19 or targeted by MicroLink with Autonomy software?

20 **A.** Yes.

21 **Q.** Scroll up to the top of this document if we can.

22 The Government focused you on columns K and L and the
23 writeoffs. I just want to -- I'm not going to devote much time
24 to it, but I want to make sure I understand.

25 So after the acquisition, am I right that Autonomy would

1 now own MicroLink?

2 **A.** Correct.

3 **Q.** Okay. And if it owned MicroLink and MicroLink owed it
4 debt before the acquisition, it wouldn't make sense to keep
5 that on the books, right?

6 **A.** Correct.

7 **Q.** Because that was debt that Autonomy now effectively owed
8 to itself?

9 **A.** Correct.

10 **Q.** So was it your understanding that that's what was going on
11 here, a writing off of internal company debts?

12 **A.** So, yeah, this is what I was trying to explain previously
13 as well. Typically if you have a receivable from a party, and
14 if you have a payroll, those would get knocked off.

15 So typically one would think that the receivable and
16 payable were in the U.S. because it's a U.S. entity. So I was
17 expecting to see the payable and the receivable in the U.S.
18 itself, but the actual -- and therefore by knocking those off,
19 they would get knocked off. But the accounting was more
20 reflective of, you know, transferring this back to any
21 holdings, which was another holding company.

22 The -- I thought at that point in time the idea was to
23 move it to a different spot where other adjustments would be
24 made from a consolidation standpoint, and then they would get
25 consolidated in the U.K.

1 Q. And you thought that because of your belief that NA
2 Holdings was a U.K. company?

3 A. No, I was under the impression it's a holding company and
4 maybe the consolidation happens at that entity or at an entity
5 higher above that, so it's anywhere out of the U.S. purview at
6 that point in time.

7 Typically you wouldn't see that. You would see all of
8 them happening real time, but...

9 Q. When you say out of the U.S. purview, I thought, correct
10 me if I'm wrong, I thought I understood your testimony to be
11 that this was happening in the U.K. with U.K. companies; is
12 that --

13 A. Yeah, the NA Holdings was not a company that we handled
14 out of the U.S.

15 Q. Well, let's take a look back at what's exhibit admitted
16 already 78, 78.1, organizational chart?

17 A. Mm-hmm.

18 Q. And let's just highlight the right-hand side there again,
19 down to the -- you don't even need to do that much. There you
20 go.

21 So Autonomy NA Holdings there is in fact a holding company
22 that owned Interwoven and the other U.S. companies, and it's
23 described as a U.S. company, right?

24 A. Yeah, I don't remember doing the accounting for this
25 entity.

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1 Q. Understood. And you actually, to the extent you said it
2 was a U.K. company, you may have been mistaken, you don't
3 actually know whether it was a U.S. or U.K. company, do you?

4 A. No, I -- I think what I was trying to say was more or less
5 controlled by the U.K., not -- we didn't -- I don't think we
6 did accounting for that in the U.S. That's as far as I can
7 recall.

8 Q. So it was that the accounting was there, not that the
9 company was there?

10 A. Correct.

11 Q. Because we can see here the company was a U.S. company?

12 A. Correct.

13 Q. And you recall there was an issue with this MicroLink
14 acquisition that because of those sensitive classified
15 programs, they needed to keep separate books in the U.S.
16 disassociated from Autonomy, right?

17 A. That's correct.

18 Q. And wasn't that the reason given for this process on the
19 spreadsheet we looked at? Why don't we take a look back at the
20 email, and that's Exhibit 7 --

21 Bear with me. Sorry, Judge. 816.

22 If we go to the second page of this one -- I'm sorry, I
23 went too fast. Why don't we show who this is an email to and
24 from on the first page.

25 This is the one you reviewed with the Government I believe

1 from Lisa Harris to you and others about this issue?

2 **A.** Yes.

3 **Q.** All right. So then now let's go to the second page, and
4 this is Lisa Harris speaking. Just highlight the bottom
5 paragraph if you will.

6 So she describes here this knockout process. It says
7 "normally we'd do this in the subsidiary books." And that's
8 what you expected to happen, right, the normal knockout through
9 the subsidiary books?

10 **A.** Yeah. Well, typically the consolidation happens at a
11 level higher than subsidiary books. It happens in the -- in a
12 level above where you -- there's local books are kept at the
13 local level, and the consolidation happens at a level that's
14 above, above that level.

15 If you -- if I have to rephrase and explain, then you have
16 individual entities, and then you have receivables and
17 payables, and because you can't knock off the receivables and
18 payables of those legal entities in those legal entities, you
19 do it one level above where you aggregate all the receivables
20 in one side, payables on the other side, and then you knock it
21 off.

22 **Q.** I profess I'm thoroughly confused. Were you -- was this a
23 problem or not? I mean, are you sitting there with some
24 concerns about this or is this just a inter-company issue,
25 because it's not clear?

1 **A.** So individually the software that was being sold was
2 individually sold to those companies to MicroLink. So
3 individually you have Zantaz selling or you have Autonomy, Inc.
4 selling to MicroLink in the past, okay. So the receivable and
5 payable are at that level, but now you're consolidating at NA
6 Holdings level, right?

7 **Q.** Right.

8 **A.** So you technically are then moving the debts from various
9 other places to NA Holdings; you knock it off.

10 **Q.** And here Ms. Harris is saying that's occurring because
11 Alan -- and Alan is the person at MicroLink, correct?

12 **A.** Yes.

13 **Q.** Alan needs to keep his book true to U.S. GAAP.

14 Did you understand that's in reference to the issue we
15 were just talking about; MicroLink had to keep essentially U.S.
16 books --

17 **A.** Yes.

18 **Q.** -- because of the classified work?

19 **A.** Yes.

20 **Q.** Okay. And that's why she's using NA Holdings as a U.S.D,
21 U.S. dollar ledger, is that at least what she explained in the
22 email?

23 **A.** Yes.

24 **Q.** And is it plausible, based on what she discussed there or
25 what we've discussed about MicroLink's business?

1 A. Yes.

2 Q. Thank you.

3 A. This is -- my understanding was if that entire listing was
4 in the MicroLink books, they would be in the respective
5 subsidiary books as well.

6 Q. Okay.

7 A. And all of those would need to be canceled and knocked
8 off.

9 Q. Fair enough. We can take that down.

10 Let's move on to Microtech.

11 You were asked about Exhibit 2268 in evidence?

12 **THE COURT:** Well, let's take a little recess here.

13 Ladies and Gentlemen of the Jury, we'll be in recess until
14 2:20. Remember the admonition given to you: Don't discuss the
15 case, allow anyone to discuss it with you, form or express any
16 opinions.

17 (Jurors exit courtroom.)

18 (Proceedings were heard out of presence of the jury:)

19 **THE COURT:** Okay. The jury has retired. About how
20 much longer do you have, do you think?

21 **MR. HEBERLIG:** I hope about 45 minutes.

22 **THE COURT:** Oh, 45 minutes. And then how long?

23 **MR. SEILIE:** Probably about an hour, hour and 15, Your
24 Honor.

25 **THE COURT:** Okay. So we're not going to finish this

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1 witness today.

2 **MR. HEBERLIG:** I'll try to take the break to
3 streamline a little.

4 **THE COURT:** Great.

5 **MR. HEBERLIG:** The Government covered a lot.

6 **THE COURT:** I like that, streamline. Let's try to
7 finish this witness today.

8 **MR. HEBERLIG:** We'll do our best.

9 **THE COURT:** Okay. Thank you.

10 (Recess taken at 2:04 p.m.)

11 (Proceedings resumed at 2:21 p.m.)

12 (Jurors enter courtroom.)

13 (Proceedings were heard in the presence of the jury:)

14 **THE COURT:** Let the record reflect all the jurors are
15 present.

16 You may proceed.

17 **MR. HEBERLIG:** Thank you, Your Honor.

18 **BY MR. HEBERLIG:**

19 **Q.** I'd like to shift and address the topic of the hardware
20 transactions, okay?

21 After Interwoven was acquired by Autonomy, you learned
22 sometime into 2009 that Autonomy was selling hardware, correct?

23 **A.** Yes.

24 **Q.** And in your experience many software companies do sell
25 hardware, right?

1 A. Yes.

2 Q. And those sales continued throughout your time at
3 Autonomy?

4 A. Yes.

5 Q. Am I right that you were not involved in the discussions
6 that came up with the commercial strategy for the hardware
7 sales?

8 A. No.

9 Q. Your role was limited to helping pay for hardware that was
10 part of these deals?

11 A. Correct.

12 Q. You never discussed hardware transactions with Mike Lynch,
13 right?

14 A. No.

15 Q. Or Hussain, Sullivan, Stouffer Egan, none of those guys?

16 A. None.

17 Q. You said you had a few conversations with Mr. Chamberlain
18 or Lisa Harris about them, right?

19 A. Yes.

20 Q. And on a high level from those conversations, you
21 understood that Autonomy was selling hardware as part of a
22 strategic effort designed to sell more software?

23 A. Correct.

24 Q. And you learned that hardware sales were typically at a
25 loss?

1 A. Yes.

2 Q. They were essentially a loss leader designed to induce
3 more software sales; is that fair?

4 A. Yes.

5 Q. Now, when Autonomy sold hardware, it did get paid by its
6 customers, right?

7 A. Yes.

8 Q. And those sales did generate revenue, correct?

9 A. Yes.

10 Q. And that revenue had to be recorded in some way on the
11 books and records?

12 A. Correct.

13 Q. Are you aware of or did you obtain a copy of a memorandum
14 prepared by Autonomy's finance department about the hardware
15 sales dated mid-October 2009 that was intended for Deloitte and
16 the audit committee?

17 A. No.

18 Q. Okay. And you've never read that memo?

19 A. No. Steve talked to me about it, but I didn't ask for a
20 copy.

21 Q. And did you understand that in the beginning of the
22 hardware sales, Autonomy had a strategic relationship with a
23 company -- a hardware supplier named EMC?

24 A. Yes.

25 Q. And they were working together to try to develop a

1 product, a hardware sale-type product?

2 A. That I'm not aware of, but I know that there was a
3 relationship with EMC. We bought a lot of EMC hardware.

4 Q. Okay. But the nature of the relationship from your
5 discussions you don't know?

6 A. No.

7 Q. And then are you also aware of the fact in 2010, so
8 sometime into the program, Autonomy shifted its approach and
9 started selling software to big financial institutions as part
10 of an effort to be sort of a one-stop shop for the big banks?

11 A. I mean, we were always selling to large Fortune 500
12 companies, so I didn't notice anything dramatically different
13 from one way or the other. These banks and these financial
14 institutions were customers one way or the other already, so we
15 were selling more to them, not less.

16 Q. And just sticking with the banks, they were -- I think
17 we've already talked about this -- they were these huge
18 data-driven organizations that were hosting a lot of their
19 stuff with Autonomy?

20 A. Correct.

21 Q. And Autonomy did large dollar software transactions with
22 those banks, correct?

23 A. Correct.

24 Q. And to the extent the banks were requesting one-stop shop,
25 help us with all of our needs, it would make commercial sense

1 for Autonomy to help fulfill that role?

2 **A.** Correct.

3 **Q.** When you spoke with Mr. Chamberlain about the hardware
4 sales, I think you alluded to this in your Direct, he assured
5 you that the program had been discussed with Deloitte, correct?

6 **A.** Correct.

7 **Q.** Yes?

8 **A.** Yes.

9 **Q.** Okay. And said something about an entire hardware
10 analysis that the U.K. finance department would review with
11 Deloitte every quarter?

12 **A.** I don't remember that, but certainly we had a discussion
13 about it, and the understanding was a memo was prepared, shared
14 with Deloitte, and Deloitte was okay with the findings.

15 **Q.** And did you also, am I correct, that you also got some
16 confirmation of that fact in a discussion you had with a
17 Deloitte auditor named Lee Welham?

18 **A.** In -- I don't remember that conversation specifically,
19 but, yes, we did have a conversation about the accounting that
20 was being done over the U.K. and that Deloitte was well aware
21 of all the accounting that was being done.

22 **Q.** And can you just explain, I'm not sure I got it the first
23 time. What did you discuss and what was your takeaway from the
24 conversation?

25 **A.** So I met with Lee when he came for an audit post the

1 events of summer of 2010, and I met him I think previously as
2 well maybe, I don't recall. But that conversation we talked
3 about, and he said, hey, we've looked at all the analysis,
4 we've taken look at all the memos, all the questions that were
5 asked, and we know -- we know about all the transactions that
6 are being processed, and we are comfortable.

7 We didn't talk about anything specific in particular, but
8 he was very guarded about what he said, and I was very guarded
9 about what I said, because I didn't know what he knew, and I
10 didn't know what I knew myself. So it was a very general
11 conversation.

12 So I don't recall that being very specific about
13 specifically related to hardware, other than just generally
14 saying he was aware of everything that had gone on, and that
15 Deloitte was comfortable.

16 **Q.** In the context of that conversation, jumped ahead a little
17 bit, that came up after Mr. Hogenson had been terminated; you
18 understood that Deloitte played a role in reviewing those
19 issues, and this was him providing some assurance to you that
20 don't worry, we've analyzed the issues and we're okay with the
21 accounting?

22 **A.** That is correct.

23 **Q.** And just so the jury is clear, Lee Welham is the person
24 you spoke with?

25 **A.** Yes.

1 Q. And he's sort of the day-to-day leader of the Deloitte
2 audit team?

3 A. Right, he was.

4 Q. Not the partner, but he's sort of the manager?

5 A. Yeah, yeah, he was the manager, yes.

6 Q. Okay. I think we've already touched on the topic of
7 appliance. But I did want to ask, so you said a couple times
8 in your testimony, you spoke about the sales of items like mice
9 and computer bags and the like, so a few questions about that.

10 We just talked about the nature of being a one-stop shop
11 for big financial institutions. Institutions like that had a
12 need for those types of products?

13 A. Sure, I'm sure they did.

14 Q. Every big business does, right?

15 A. Yeah.

16 Q. Did you ever attempt to quantify what amount of the
17 hardware sales fell into this category; does less than one
18 percent appear consistent with your experience?

19 A. The -- I don't remember off hand the total amount, but the
20 hardware sales were more -- were less of the usual types that
21 we were seeing previously, more of the ones that I referred to
22 as, you know, the normal IT sort of stuff that you would see on
23 a day-to-day basis rather than, you know, servers from an
24 appliance perspective.

25 Q. Just to unpack that. So in the beginning for some period

1 of time, typically what was being sold to these customers was
2 big servers, storage items that they could keep their data on,
3 consistent with Autonomy's software products, correct?

4 **A.** Correct.

5 **Q.** Okay. And then as the program evolved, you saw some sales
6 with these big financial institutions of the like that you
7 described?

8 **A.** Yeah, quite a bit.

9 **Q.** Okay. Now, let me ask you about the topic of expense
10 allocation.

11 **A.** Okay.

12 **Q.** Do you recall getting some questions about that topic?

13 **A.** Mm-hmm.

14 **Q.** And they related to how you allocated the expenses paid
15 for the hardware on the company's books and records?

16 **A.** Correct.

17 **Q.** And so revenue is one thing, there are all sorts of ways
18 in which you can recognize revenue, but there's also expense.
19 When you pay for something, you have to put that on the books
20 as well, correct?

21 **A.** Correct.

22 **Q.** And you, during your time at Autonomy during this period,
23 you were not responsible for making those expense
24 determinations at the consolidated company level in the U.K.?

25 **A.** No, not at the consolidated company level.

1 Q. Those decisions occurred in the U.K. like the other big
2 picture accounting decisions, correct?

3 A. Correct. Correct.

4 Q. And are you familiar with the principles under the IFRS
5 that related to these issues?

6 A. Which in particular?

7 Q. Well, I guess let me put it a different way. Do you
8 understand that the IFRS rules that accounting -- that govern
9 Autonomy's accounting didn't define how to allocate costs
10 between categories like costs of goods and sales and marketing?

11 A. Well, I don't know the IFRS rules, but I can't imagine
12 that they would be dramatically different from what normal GAAP
13 would be.

14 Q. Okay. But you're completely speculating there, because
15 you don't know the IFRS rules, correct?

16 A. No, I don't.

17 Q. Okay. So back to my question: You don't know whether the
18 IFRS rules define how to allocate between costs of goods and
19 sales and marketing; is that fair?

20 A. Well, I don't think specifics, that's fair.

21 Q. Okay. Would you agree that where you allocate an expense
22 can turn on the purpose for the expenditure?

23 A. I didn't understand the question.

24 Q. Do you agree as a general matter that where you categorize
25 an expense can depend on the purpose for which you made the

1 expenditure?

2 **A.** Correct.

3 **Q.** So, for instance, if a company, say a telephone provider
4 is giving away free phones to induce companies to sign up for
5 the service. The cost of the phone in that scenario could be
6 viewed as a marketing expense?

7 **A.** Correct.

8 **Q.** And likewise, a coffee shop that decides it wants to sell
9 cake at bargain prices to get people in the door to buy more
10 coffee, the price of the cake could be viewed as a marketing
11 expense, correct?

12 **A.** Correct.

13 **Q.** And so if Autonomy was viewing the sale of hardware to its
14 software customers is a way to induce them to buy more
15 software, it could view a portion of those expenses as sales
16 and marketing?

17 **A.** Yeah, it's, again, I don't know specifically what
18 provision under the IFRS guidance that would say that. I
19 haven't personally seen it. I don't -- therefore, I can't
20 comment on that.

21 My general understanding of GAAP is that --

22 **Q.** I'm sorry, but this is a case that's focused on IFRS.

23 **MR. LEACH:** Your Honor, can the witness be allowed to
24 answer?

25 **MR. HEBERLIG:** We don't need an understanding of GAAP.

1 That's not --

2 **THE COURT:** Withdraw the question. Go ahead.

3 **BY MR. HEBERLIG:**

4 **Q.** I think you've answered my question. Thank you.

5 There was some testimony back and forth about the hardware
6 sales or some questions and answers about gross versus net
7 accounting.

8 **A.** Correct.

9 **Q.** Okay. And without getting into the details, you did not
10 have discussions with either the U.K. finance department or
11 Deloitte about that issue, correct?

12 **A.** I did not.

13 **Q.** Okay. And do you know whether Deloitte and two of the
14 other Big Four accounting firms analyzing the same issue
15 concluded that gross is appropriate, not net?

16 **A.** Possible.

17 **Q.** That's possible?

18 **A.** Possible.

19 **Q.** All right. Last topic on hardware relates to disclosure.

20 **A.** Mm-hmm.

21 **Q.** I think you testified that you believed, given the
22 magnitude of the hardware sales as you saw them, that you
23 believed Autonomy should have disclosed hardware sales
24 separately in its financials?

25 **A.** Correct.

1 Q. Did I get that correct?

2 A. Right.

3 Q. And you said something about, you know, if the revenue
4 approached 10 percent, maybe even lower, that, in your view,
5 warranted disclosure in the financials?

6 A. Correct.

7 Q. All right. Before I get into some details, you did not
8 discuss the threshold for disclosure of anything in Autonomy's
9 financials with Deloitte and the U.K. finance department,
10 correct; that wasn't your job?

11 A. Well, generally I had conversation with Steve and Lisa,
12 but not specifically. It is not my limit.

13 Q. Okay. Now, is it your view that selling hardware --
14 software companies selling hardware of the type and magnitude
15 that we've seen should have disclosed hardware as a separate
16 line item?

17 A. Well, depending on the circumstances, I've seen it done
18 differently. Some include it in the software line, but
19 disclose it so it includes hardware with X dollars. Sometimes
20 they say it's an appliance, and, therefore, they don't disclose
21 it separately. Sometimes they call it hardware separately, a
22 separate line item on the financial statements. So it's been
23 done differently --

24 Q. Right.

25 A. -- depending on the nature and volume and the amount.

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1 Q. And so we talked about it earlier, you left Autonomy and
2 you went to a software company called TIBCO?

3 A. Correct.

4 Q. All right. And am I right that TIBCO, that software
5 company, also sold some hardware?

6 A. Yeah.

7 Q. And it did not separately disclose that hardware in a line
8 item on its financials?

9 A. That is correct.

10 Q. Okay. And TIBCO was also selling hardware that didn't
11 have software loaded onto it; is that correct?

12 A. No.

13 Q. It was selling hardware that did not otherwise include
14 software?

15 A. It was selling appliances.

16 Q. My question is, did it sell a tangible hardware product
17 that did not include software on it?

18 A. No.

19 MR. HEBERLIG: Your Honor, I have Exhibit 7812.

20 THE COURT: 7812.

21 MR. HEBERLIG: Is a Form 10-K from TIBCO that is a
22 public filing. I believe the Court can take judicial notice of
23 it. I'd like to --

24 THE COURT: Well, let me take a look at it. Is it a
25 tab?

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1 **MR. HEBERLIG:** It is a tab 40.

2 **THE COURT:** Pardon me?

3 **MR. HEBERLIG:** 4-0 from the year the witness joined
4 TIBCO.

5 **THE COURT:** What page?

6 **MR. HEBERLIG:** 65.

7 **MR. LEACH:** Your Honor, I object under 401 and 40 --

8 **THE COURT:** Pardon me?

9 **MR. LEACH:** I object under 401, 403. It's well after
10 the time period.

11 **MR. HEBERLIG:** I'd be happy to make a proffer at
12 sidebar.

13 **THE COURT:** Well, wait a minute. You say it's after
14 the time period. What is the time period?

15 **MR. HEBERLIG:** Fiscal year 2012 where it's a question
16 related to the testimony that we just received.

17 **THE COURT:** Well, but it's subsequent to it, so I'm
18 not going to allow it at this time.

19 **MR. HEBERLIG:** May I please make a proffer at sidebar?

20 **THE COURT:** Yeah, later. Later. Okay. We'll return
21 to it.

22 **BY MR. HEBERLIG:**

23 **Q.** Okay. Well, putting aside whether the software was
24 sold -- excuse me -- the hardware was sold as an appliance or
25 without software on it, I believe you did just confirm that

1 TIBCO in its disclosures did not have a separate line item for
2 hardware, correct?

3 **A.** Correct.

4 **Q.** So it reported its hardware sales in the software license
5 line?

6 **A.** Correct.

7 **Q.** Okay. And it included some disclosure about the rough
8 magnitude of the hardware sales; do you remember that?

9 **A.** Not off the top of my head, at this point.

10 **Q.** Okay. My question is, isn't it the case -- well, let me
11 back up.

12 You testified that it was misleading for Autonomy to not
13 disclose hardware sales separately that approached 10 percent
14 of revenue, correct?

15 **A.** Correct.

16 **Q.** And my question to you, sir, is didn't TIBCO also have
17 hardware sales that approached or were greater than 10 percent
18 of its license revenue that it disclosed in simply the software
19 license line item?

20 **MR. LEACH:** Objection, Your Honor, 401, 403, vague as
21 to time.

22 **MR. HEBERLIG:** The year after, when you joined the
23 company. I'm sorry, in 2012 --

24 **THE COURT:** You're saying 2012, but that's subsequent
25 to the acquisition, right?

1 **MR. HEBERLIG:** This is to address his testimony that
2 it was misleading.

3 **THE COURT:** Okay. Fine. The objection is sustained.

4 **BY MR. HEBERLIG:**

5 **Q.** All right. Let's talk about the issues surrounding
6 Mr. Hogenson's termination.

7 **A.** Okay.

8 **Q.** You, I believe, testified that you had raised some
9 questions or you're aware that Mr. Hogenson was raising some
10 questions over in the U.K.?

11 **A.** Yes.

12 **Q.** And some of the materials that Mr. Hogenson provided
13 included I believe some Filetek information that you gave to
14 him?

15 **A.** He must have. I --

16 **Q.** He must have?

17 **A.** He must have.

18 **Q.** Did you have that understanding at the time?

19 **A.** He asked for a bunch of information. He said he was going
20 to -- he had in his possession a bunch of other information
21 from some of my other colleagues. He was going to piece it all
22 together and then explain to them. So I have no idea what he
23 did with the documents I provided to him, but I understood that
24 that was for that purpose.

25 **Q.** The Filetek information?

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1 A. The other information, too, that he had asked me for.

2 Q. Okay. Including Filetek?

3 A. Yeah.

4 Q. Yeah. And did Mr. Hogenson share with you the response he
5 got from Autonomy's U.K. management regarding those issues,
6 including some contemporaneous documentation?

7 A. He didn't share anything with me, whether in writing or in
8 orally. He was saying that I can't share, I won't talk, so...

9 Q. Okay. Did he, without sharing the information, tell you
10 that he did receive a response from U.K. management on these
11 issues or was it just a blank slate?

12 A. He basically said the talks were -- he was discussing, and
13 he said -- from the look on his face it didn't appear as though
14 it was going well.

15 Q. Appears as though what?

16 A. It didn't look as though it was going well, from the look
17 on his face.

18 Q. Okay. But he didn't share with you anything he received
19 in response to his inquiries?

20 A. No.

21 Q. Now, let's address this topic of the payroll issues that
22 the Government covered with you on Direct.

23 Am I right that in early May 2010, that's when you first
24 surfaced this issue with Mr. Hogenson in that document we saw
25 on Direct? And maybe I can pull it up and refresh your memory

1 about it.

2 **A.** Which payroll issue? There were two payroll issues: One
3 was the payroll fraud, and one were process and other sort of
4 minor details associated with payroll.

5 **Q.** So not the process issues that we saw your spreadsheet
6 with like the ACH stuff. I'm talking about the fraud. I'm
7 talking about the embezzlement.

8 **A.** Yeah, so the fraud was discussed with Mr. Hogenson, with
9 Mr. Scott.

10 **Q.** Right. And I'm just trying to time when that was.

11 So let me pull up 7876, which I believe is -- it may not
12 be in evidence. Hold on. I don't think it is. It's tab 45.

13 **THE COURT:** 7876?

14 **MR. HEBERLIG:** Yes.

15 **THE COURT:** Admitted.

16 (Trial Exhibit 7876 received in evidence.)

17 **UNIDENTIFIED SPEAKER:** You want the spreadsheet?

18 **MR. HEBERLIG:** No, just the email first.

19 **THE COURT:** 45, right?

20 **MR. HEBERLIG:** Yes. There is a related email which
21 I'm going to -- which is 7876.1, it's the spreadsheet
22 attachment. I'm going to show that in a moment, if I may offer
23 that.

24 **THE COURT:** 7876.1 admitted.

25 **MR. HEBERLIG:** Thank you.

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(Trial Exhibit 7876.1 received in evidence.)

BY MR. HEBERLIG:

Q. All right. So this is early May, May 4, 2010, you to Mr. Hogenson, attaching a list of issues, correct?

A. Yep.

Q. Okay. And now let's look at the attachment and what it says regarding this payroll issue.

7876.1, the password, yeah, Lotus.

All right. If we can go to number 6. Can you highlight that in some way so it's clear?

Okay. Do you see what we've indicated there in row 6 of the spreadsheet?

A. Yeah.

Q. So this is your report to Mr. Hogenson of the issue, and it talks about a payroll clerk named Lourdes; am I correct?

A. Yes.

Q. She was the person who like administered the paychecks and payroll?

A. That is correct.

Q. All right. And the issue that you discovered in early May was that she had continued to pay a certain number of employees who had left the company for some four months before?

A. Correct.

Q. So they were supposed to have been off the books, they departed the company, but they were still getting paid under

1 the payroll?

2 A. Correct.

3 Q. And this person Lourdes was responsible for the issues?

4 A. Well, she was the payroll clerk; she should have taken
5 more care.

6 Q. All right. And what you say in the corner or in the
7 right-hand side is that "Lourdes needs to be further trained on
8 the process," right?

9 A. Yes.

10 Q. And that was what you and Mr. Hogenson believed that the
11 issue entailed as of early May 2010?

12 A. That is correct.

13 Q. Okay. And of course it was later determined that the same
14 person, Lourdes, was the one who embezzled a million and a half
15 dollars from the company, right?

16 A. Probably more, but, yeah.

17 Q. Probably more?

18 A. Yeah.

19 Q. Okay. But as of early May, the solution was she needed to
20 be further trained, right?

21 A. Correct.

22 Q. And Mr. Hogenson waited nearly a full month to report this
23 information to the U.K. Finance Group; do you recall that?

24 A. No, this was -- this would have been on the list of issues
25 that -- the final list was the list where I discussed with

1 Steve.

2 Q. Well, let's take a look at Exhibit 7879, and that is tab
3 47. And I would offer it.

4 THE COURT: Okay. 7879 admitted.

5 (Trial Exhibit 7879 received in evidence.)

6 BY MR. HEBERLIG:

7 Q. All right. So we were looking just a moment ago at the
8 early May email. This is now May 26 of 2010, Mr. Hogenson
9 writing to Mr. Hussain, and Mr. Chamberlain seeking termination
10 approval for the payroll clerk we were just discussing, Lourdes
11 Dionisio, right?

12 A. Yes.

13 Q. Okay. And let's just take a look at how Mr. Hogenson
14 characterizes the issue: "There have been significant errors."

15 Errors, right? Not fraud, right?

16 A. Mm-hmm.

17 Q. Not embezzlement?

18 A. Mm-hmm.

19 Q. Okay. "There have been significant errors in the San
20 Francisco payroll that's driven this decision to terminate
21 Ms. Dionisio," and then he goes through this issue with the
22 four employees continuing to get paid, right?

23 A. Yep.

24 Q. Okay. And do you remember you provided that information
25 to Mr. Hogenson?

1 A. Yes.

2 Q. He cut and paste from one of your emails?

3 A. Correct.

4 Q. Okay. And that's the end of May 2010.

5 Now, that, in fact, was not the scenario, correct? It
6 wasn't just significant errors and payments to four employees
7 when had left the company. At this time, and occurring for
8 some months before, this woman had embezzled more than a
9 million and a half dollars from the company?

10 A. She had embezzled money prior, and there was only one
11 payment that we found in 2010, one or two I think in 2010, and
12 that stopped immediately after we took over.

13 Q. I understand. I'm not suggesting that you facilitated her
14 embezzlement. But my question is at this time when
15 Mr. Hogenson was describing the situation as involving
16 significant errors, in fact, there had been a million and a
17 half dollars embezzled from the company; you learned that
18 later, didn't you?

19 A. Not at that point in time, yes.

20 Q. You didn't learn it at that point in time, correct?

21 A. Right.

22 Q. And the passage of time from early May to May 26th doesn't
23 indicate a terrible amount of urgency on this issue, correct?

24 A. Correct, we were just -- we were trying to understand the
25 extent of the issues at that point in time, and information

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1 from Lourdes wasn't very forthcoming. It was taking time.

2 Q. Now, it would have been apparent if you had gone to the
3 payroll records and investigated what this woman had done, that
4 she had in fact embezzled a million and a half dollars, but
5 that effort wasn't undertaken at this time, was it?

6 A. That is correct.

7 Q. It was only when fortuitously the California Unemployment
8 Department, after this employee filed for unemployment noticed
9 you her prior wages, that you and Mr. Hogenson detected this
10 issue?

11 A. That is correct.

12 Q. And upon that notice, roughly a month or so after this,
13 then all of a sudden the million and a half dollar embezzlement
14 became clear; is that fair?

15 A. That is correct.

16 Q. Okay. We can take that down.

17 Am I right that also during the second quarter of 2010, at
18 Mr. Hogenson's direction, a number of policies and procedures
19 were changed in the Americas finance department without the
20 authorization of the U.K. finance department?

21 A. Not necessarily aware of that. My assumption was --

22 Q. That's just are you aware; do you recall that?

23 A. Well, I know a number of policies were changed, but all of
24 those were discussed. I mean, these were not changed without
25 us telling anybody.

1 Q. So you have a firm memory 14 years ago today that all of
2 the policy changes that were undertaken in the Americas were
3 done with full authorization from the U.K.?

4 A. We would not, at that point in time, we would not do
5 anything without checking with the U.K. first.

6 Q. Okay.

7 A. That was the -- that was what we were told to do, and
8 that's what we would have done.

9 Q. So that's a firm memory?

10 A. That's my recollection, yes.

11 Q. You're confident -- let me just ask the question.

12 You are confident that no policies were changed in the
13 Americas without the authorization of the U.K. finance
14 department?

15 A. We would have informed the U.K. for certain.

16 Q. But you did receive emails from Mr. Hussain sent to
17 Mr. Hogenson and forwarded on to you in which he reprimanded
18 Mr. Hogenson for changing company policy without authorization
19 right around this time period, didn't you?

20 A. I don't recall that.

21 Q. Well, let's take a look at Exhibit 7694.

22 THE COURT: 7694 admitted, which is?

23 MR. HEBERLIG: Tab 34.

24 (Trial Exhibit 7694 received in evidence.)

25 BY MR. HEBERLIG:

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1 Q. And let's just scroll down to the second page, please, and
2 highlight if we can the message from Mr. Hussain to
3 Mr. Hogenson.

4 And we'll look at it in a second, but this is subsequently
5 forwarded to you.

6 A. Yeah, right.

7 Q. So Mr. Hussain has a list of issues for Mr. Hogenson a few
8 days into or after the close of quarter 2 where (As read) a
9 number of communication issues have arisen with your team that
10 we need to clear out; do you see that?

11 A. Yes.

12 Q. All right. And one of them, bullet point 1: I understand
13 that Steve, that's Steve Chamberlain, correct; is that your
14 understanding?

15 A. Yes, that's Steve Chamberlain.

16 Q. (As read) Has requested a number of times raw information
17 and has not received it. Can that be sent tonight regarding --
18 and there's some, you know, maintenance issues and accruals
19 that he was seeking information on. Am I reading that
20 correctly?

21 A. Yeah.

22 Q. All right. Now, how about the second point? He says (As
23 read) It appears that you have informed members of your team
24 not to speak directly to Steve Chamberlain, the group VP of
25 finance. Can you confirm whether this is the case or whether

1 there's some misunderstanding.

2 Now, did you receive an instruction like that from
3 Mr. Hogenson?

4 **A.** Absolutely not.

5 **Q.** Okay. So that's incorrect?

6 **A.** Yeah.

7 **Q.** All right. Now, let's look at the third bullet point.

8 Mr. Hussain is complaining there that (As read) policy
9 decisions which are typically set at the group level, not at
10 the operational level --

11 And that's a reference to the operational units in
12 America, correct?

13 **A.** Mm-hmm.

14 **Q.** Okay. (As read) I note from some of the correspondence
15 with Steve, it appears that you are changing policy on certain
16 matters without direction from the group's senior financial
17 personnel. Can you please confirm that you will revert to
18 current standing group policy on matters, right? That's what
19 he said?

20 **A.** Yeah.

21 **Q.** And your recollection is that didn't occur?

22 **A.** That's not my recollection at all.

23 **Q.** That's not your recollection.

24 Okay. And let's just look at the top email where
25 Mr. Hogenson forwards this information along. And he asks

1 you -- he forwards it to you, and you recognize the other
2 individuals, right, Ms. Prasad and Mr. Tejeda?

3 **A.** Yes.

4 **Q.** And asked that you work with Steve and the finance group,
5 and to ensure that accurate information is provided, okay?

6 **A.** Yes.

7 **Q.** Okay. Now, you can take that one down.

8 Am I correct that an issue also arose where members of the
9 Americas finance organization were authorizing payments or
10 write-offs that were in excess of company policy without
11 approval from the U.K.?

12 **A.** That I'm not aware of.

13 **Q.** You're not aware of that issue either?

14 **A.** No.

15 **Q.** Do you recall being the recipient of an admonition from
16 Mr. Chamberlain reminding the group about the nature of the
17 policy levels?

18 And it's not a memory test. How about Exhibit 7756, which
19 is tab 35.

20 **THE COURT:** 7756 admitted.

21 (Trial Exhibit 7756 received in evidence.)

22 **BY MR. HEBERLIG:**

23 **Q.** And this is July 22, 2010?

24 **A.** Mm-hmm.

25 **Q.** And let's focus on Mr. Chamberlain's message.

1 And you're included as a recipient along with the rest of
2 the -- well, several individuals from the Americas financial
3 organization and some from out, right?

4 **A.** Yep.

5 **Q.** He's issuing a reminder of the approval levels that were
6 required for any payment within the finance department, right?

7 **A.** Mm-hmm.

8 **Q.** And it includes, if we scroll down to number 5, credit
9 notes.

10 What is a credit note?

11 **A.** So typically if you give a credit to a customer about --
12 for any sort of services that you provided to them, and you are
13 recognizing that they don't need to pay that amount, you give
14 them a credit note and say you don't need to pay me for that
15 number. It's an internal document, but it requires approvals
16 before you say that a particular amount will not be collected.

17 **Q.** And do you recall that throughout your time that those
18 approvals, at least above \$5,000, needed to be obtained from
19 the U.K. finance department?

20 **A.** Yes.

21 **Q.** And so any credit note or write-off above that amount that
22 hadn't received U.K. finance approval was unauthorized in
23 violation of company policy?

24 **A.** It would be, if there was a specific policy around that,
25 then absolutely.

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1 Q. All right. We can take that one down, and just a couple
2 more.

3 You testified about the fact that you learned of the HP
4 acquisition essentially at the same time as the members of the
5 public, correct?

6 A. Yes.

7 Q. Okay. That announcement was on August 18, 2011?

8 A. Yeah.

9 Q. Thereabouts?

10 A. Yeah, thereabouts, must be.

11 Q. And so you had no advanced notice of the deal?

12 A. No. No.

13 Q. And I believe this is common sense, but you weren't
14 involved then in any of the due diligence that occurred in the
15 period of time prior to the deal being announced?

16 A. Absolutely not.

17 Q. Okay. And you obviously weren't involved in the
18 negotiation over the price or the strategic goals behind it?

19 A. No.

20 MR. HEBERLIG: Okay. Subject to the discussion I'd
21 like to have, I have nothing further.

22 THE COURT: Thank you. Okay.

23 MR. LEACH: Your Honor, may we approach about a
24 scheduling issue briefly?

25 THE COURT: Right now? I mean, right this minute?

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1 **MR. REEVES:** Yes, please, Your Honor.

2 **THE COURT:** All right. Ladies and Gentlemen, if you'd
3 like to get up stretch, go ahead. Talk.

4 (At sidebar - not reported.)

5 **THE COURT:** Ladies and Gentlemen, we're going to
6 interrupt this witness's testimony at this point because there
7 is another witness who has a conflict later on tomorrow. And
8 so if we get her on today and finish with her tomorrow, that
9 will be a great accommodation to the witness.

10 And so just my admonition to you is we have not finished
11 with this witness's testimony. Keep it in mind. It will be
12 resumed tomorrow afternoon. And I want to thank the parties
13 for being so understanding. They agreed to this. They agreed
14 to this. And we're going to have that from time to time.

15 We have witnesses who have all sorts of issues, especially
16 since a number of them are outside the country, and you just
17 have to multi-listen.

18 Okay. You can step down, and we'll resume your testimony
19 tomorrow, at some point tomorrow. Just stay in touch with the
20 U.S. Attorney if you will.

21 Great. Thank you very much. Call your next witness.

22 **MS. GREEN:** Thank you, Your Honor. The Government
23 calls Ms. Reena Prasad.

24 **THE COURT:** Okay. Thank you.

25 **THE CLERK:** Please raise your right hand.

PRASAD - DIRECT / GREEN

REENA PRASAD,

called as a witness for the GOVERNMENT, having been duly sworn,
testified as follows:

THE WITNESS: I do.

THE CLERK: Thank you. Please be seated.

Please state your full name for the record and spell your
last name.

THE WITNESS: My name is Reena Prasad. My last name
is spelled P-R-A-S-A-D.

DIRECT EXAMINATION

BY MS. GREEN:

Q. Good afternoon, Ms. Prasad.

A. Good afternoon.

Q. Could you provide us with a brief overview of your
educational background?

THE COURT: You have to speak in the microphone?

MS. GREEN: I apologize, Your Honor.

THE COURT: That's all right.

BY MS. GREEN:

Q. Could you provide us with a brief overview of your
educational background?

A. Sure. I graduated from U.C. Davis in 1999 with a
bachelor's -- bachelor of Arts in International Relations with
a concentration in business economics.

Q. And where did you work following graduation?

1 A. Following graduation I was hired by Hewlett Packard.

2 Q. And was that for approximately one year?

3 A. Yeah, just over a year.

4 Q. And where did you work after that?

5 A. I wanted to move back to the Bay Area, so I looked for a
6 job and was hired by Interwoven in 2000.

7 Q. In 2009, approximately, was Interwoven acquired by a
8 company called Autonomy?

9 A. Yes, that's correct.

10 Q. And from that point on did you work at Autonomy until
11 approximately mid-2010?

12 A. Yes, that's correct.

13 Q. What type of company was Interwoven?

14 A. They were a software company, a content management
15 software.

16 Q. What were your job responsibilities at Interwoven?

17 A. They started out -- the company was smaller, so I was part
18 of the customer accounting services group. We did order
19 processing, invoicing, credit and collections, maintenance
20 renewals. Then within three months I was promoted to
21 supervisor, and throughout my time with Interwoven I was
22 promoted about every three years. It wasn't until I think it
23 was 2004 I took over collections solely.

24 Q. And you've mentioned credit and collections. What is
25 that?

1 A. Collections, credit and collections is evaluating credit
2 worthiness of our customers and collecting, contacting the
3 customers, following up on their outstanding invoices.

4 Q. So just generally did your job involve following up on
5 outstanding invoices and getting in payments to the company?

6 A. Yes, I did that for about ten years.

7 Q. Who did you report to at Interwoven prior to the Autonomy
8 acquisition?

9 A. Initially I reported to Yvonne Borrell. After the
10 Interwoven acquisition of iManage, I reported I believe to
11 Mr. Percy Tejada.

12 Q. And just for the benefit of the jury, was that Interwoven
13 acquisition of iManage, was that in approximately 2003?

14 A. I believe so, yes.

15 Q. So from that point on you were reporting to Mr. Tejada?

16 A. Yes, that's correct.

17 Q. After the Autonomy acquisition of Interwoven in 2009, how
18 did your job responsibilities change, if at all?

19 A. They changed -- I was still in the same type of function,
20 but I was managing larger accounts receivable, more people. I
21 was managing the collections teams from all the different
22 entities of Autonomy in the Americas.

23 Q. You mentioned accounts receivable, what is that?

24 A. Accounts receivable is a listing of all of the outstanding
25 invoices that customers owe payment on.

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1 Q. So after the Autonomy acquisition, were you essentially
2 still handling collections, payments coming in just from more
3 entities at that point?

4 A. Yes, yes, that's correct.

5 Q. At some point in time did you become the Director of
6 Credit and Collections?

7 A. Yes, I did. I was promoted.

8 Q. And what were your day-to-day responsibilities in that
9 role?

10 A. My day-to-day responsibilities were managing a team of
11 about 13 people in various offices, managing escalated
12 accounts. If there were problems or delays with, you know,
13 customers or resellers I would get involved, I would be
14 notified. I would be communicating with management on a
15 regular basis on what cash was expected, and sharing updates
16 with them.

17 Q. And when you mentioned problems or delays, are you
18 referring to problems or delays with respect to collecting
19 payment from the individuals that had been or the entities that
20 had been issued invoices?

21 A. Yes, that's correct.

22 Q. Who did you report to at Autonomy -- at Autonomy after
23 that acquisition, the Autonomy acquisition?

24 A. After the Autonomy acquisition, I think initially for a
25 short time I was reporting to Mr. Tejeda, and then I started

1 reporting to the CFO of the Americas, Mr. Brent Hogenson.

2 Q. And where did Mr. Hogenson work prior to Autonomy buying
3 Interwoven?

4 A. Prior to Autonomy?

5 Q. Yes.

6 A. And prior to Interwoven?

7 Q. Did Mr. Hogenson work at Interwoven?

8 A. I apologize.

9 Q. Of course.

10 A. Mr. Hogenson worked at Interwoven prior to Autonomy.

11 Q. And did you report up ultimately to any others in the U.K.
12 above Mr. Hogenson?

13 A. My direct boss was Mr. Hogenson, but I reported up through
14 Mr. Chamberlain.

15 Q. And did he report up to Mr. Hussain?

16 A. That's correct.

17 Q. What location did you work in initially?

18 A. I --

19 Q. What office location?

20 A. Under Autonomy?

21 Q. Under Autonomy, yes.

22 A. Uh-huh. I worked in the San Jose office.

23 Q. What was Mr. Chamberlain's role at Autonomy?

24 A. Mr. Chamberlain's role I believe was Vice-President of
25 Finance.

1 Q. Did you interact with Mr. Chamberlain?

2 A. Yes, regularly.

3 Q. You said "regularly," so you had quite frequent
4 communication with Mr. Chamberlain?

5 A. I'm sorry, what did you say?

6 Q. Did you have quite frequent communication with
7 Mr. Chamberlain?

8 A. Yes, by email, phone calls, group calls, yeah.

9 Q. And on what topics generally would you and Mr. Chamberlain
10 interact?

11 A. We would be discussing collections, outstanding invoices,
12 large dollar amounts, any kind of problematic accounts, and
13 past due invoices.

14 Q. You mentioned two terms there that I want to make sure the
15 jury understands.

16 A. Okay.

17 Q. You first said "outstanding invoices," what is that?

18 A. Okay. An outstanding invoice is once an invoice is
19 generated and it's -- it's reflected on our accounts
20 receivable, it's outstanding, meaning there's a due date and
21 it's owed to the company, the payment is owed to the company.

22 Q. And you also mentioned past due accounts.

23 A. Mm-hmm.

24 Q. What do you mean by "past due accounts" or "past due
25 debt?"

1 **A.** Okay. There's a due date on the invoice, and if the
2 customer, reseller or partner hasn't paid by the due date, then
3 it's past due.

4 **Q.** And you would have discussions with Mr. Chamberlain about
5 issues related to past due accounts, collections, et cetera?

6 **A.** That's correct.

7 **MS. GREEN:** I would like to admit Exhibit 13077.

8 **THE COURT:** 13077 admitted.

9 (Trial Exhibit 13077 received in evidence.)

10 **MS. GREEN:** Mr. Hasan, can we make the top half of the
11 page bigger, please? Great. Thank you.

12 **BY MS. GREEN:**

13 **Q.** Is this an email from you, Ms. Prasad, to Mr. Chamberlain
14 dated April 22nd, 2010?

15 **A.** Yes, it is.

16 **Q.** And just looking at that email, what were you sending to
17 Mr. Chamberlain on this date?

18 **A.** List -- excuse me, a report of invoices that were due
19 after June 30th, 2010.

20 **MS. GREEN:** And looking at page 2, please, Mr. Hasan.
21 Thank you. And if we can make the emails bigger. Thank you.

22 **BY MS. GREEN:**

23 **Q.** Were you sending this email to Mr. Chamberlain as a result
24 of a request from him to send that information?

25 **A.** Yes, that's correct.

1 Q. Is this an example of you giving an update to
2 Mr. Chamberlain on outstanding debts of the company?

3 A. Yes.

4 Q. And let's go back to page 1, please.

5 Were there attachments to your email?

6 A. Yes.

7 MS. GREEN: And let's go to page 7, which is one of
8 those attachments, and can we make that bigger, please,
9 Mr. Hasan. Thanks.

10 BY MS. GREEN:

11 Q. What does this page show?

12 A. It shows the outstanding invoices over and under a certain
13 dollar amount with a total.

14 Q. And the total is approximately 36.6 million due after
15 June 30th, 2010; is that right?

16 A. That's correct.

17 MS. GREEN: And let's go to page 8, please.

18 And can we make the table and the title bigger, please,
19 Mr. Hasan. Thank you.

20 BY MS. GREEN:

21 Q. Does this show Autonomy's invoices that are due after
22 June 30th, 2010?

23 A. Yes, it does.

24 Q. And it is only the ones over 250,000; is that right?

25 A. That's correct, for that page, yes.

1 **THE COURT:** Could we go back to the preceding
2 document? Can you blow it up? It says Summary of Invoices Not
3 Due in Q2. Is that -- they're not due?

4 **MS. GREEN:** As in they're due after Q2, 20 --

5 **THE COURT:** I'm sorry?

6 **MS. GREEN:** Yes, those are invoices due after
7 June 30th, 2010, so the --

8 **THE COURT:** I see. So those are invoices that are due
9 after Q -- in Q3 and on?

10 **THE WITNESS:** Yes, they have later due dates.

11 **THE COURT:** Later due dates.

12 Okay. Thank you very much. Thank you.

13 **MS. GREEN:** Thank you, Your Honor.

14 And let's go back to the email, please, page 1, and let's
15 zoom in on the email again, Mr. Hasan, please.

16 **BY MS. GREEN:**

17 **Q.** What is the subject line of the email?

18 **A.** Debtors not Collectible in Q2.

19 **Q.** And what did you understand that to mean?

20 **A.** Customers with invoices that did not have an invoice
21 date -- an invoice due date by the end of the quarter at the
22 end of June.

23 **MS. GREEN:** And if we could go back to page 8, please,
24 Mr. Hasan, and zoom in on the table, please. Just there is
25 fine.

1 **BY MS. GREEN:**

2 **Q.** Do you see some customer names there, MicroLink and Capax
3 Global?

4 **A.** I do.

5 **Q.** And do you recognize those names?

6 **A.** I do.

7 **Q.** What types of companies were Capax and MicroLink,
8 generally?

9 **A.** Resellers.

10 **Q.** And what is your understanding of what a reseller is?

11 **A.** A reseller would re-sell our product or our company's
12 product to another company, an end user.

13 **Q.** We've talked about past due debt. We've touched on that.
14 While you were handling collections at Autonomy, did you
15 encounter any issues collecting past due debts owed to
16 Autonomy?

17 **A.** Yes, I did.

18 **Q.** And can you describe generally the issues that you were
19 seeing?

20 **A.** Through resellers?

21 **Q.** Yes, resellers.

22 **A.** There were many resellers that were not confirming --
23 either had past due or not confirming when payments would be
24 made, and I was told either by the reseller or someone else
25 that the end user deals were not finalized or in place.

1 Q. So were you encountering issues collecting payments from
2 resellers?

3 A. Yes, I was.

4 Q. And was the -- I just want to clarify what you just said.
5 Was the reason that you were being given for not being
6 able to collect those payments, that the reseller didn't have
7 an end user customer in mind or in place?

8 A. That's correct. If there's no end user, then there's no
9 payment coming from the end user to the reseller, and
10 oftentimes the reseller is saying they won't pay Autonomy
11 because they don't have that payment from an end user.

12 Q. From your perspective as head of collections, whether or
13 not a reseller had an end customer lined up or in mind for that
14 product, did that affect whether or not they owed money and had
15 to pay Autonomy for that deal?

16 A. No, the reseller would still be on the hook for payment
17 for paying Autonomy.

18 Q. But, nevertheless, you were being given this reason as a
19 reason why the resellers were not paying; is that correct?

20 A. That's correct. That's correct.

21 Q. As head of collections were you concerned about the past
22 due debts for Autonomy?

23 A. Yes, I was.

24 Q. And why was that concerning to you?

25 A. From the resellers specifically or in general?

1 Q. Resellers and in general, what's the issue with that?

2 A. We're not receiving the cash.

3 Q. And does that mean it's just sitting on your accounts
4 receivable?

5 A. That's correct, it's sitting on the accounts receivable,
6 you know, I'm looking at a report, and the invoices and
7 outstanding amounts are getting older and older and adding up.

8 Q. Are you familiar with the term "DSO?"

9 A. I am, yes.

10 Q. What does that stand for?

11 A. DSO stands for Days Sales Outstanding, and what that is,
12 just in a kind of high level, is a measure of how quick -- how
13 quickly your customers are paying their bills, their invoices.

14 Q. And is that metric important?

15 A. Yes, I believe so.

16 Q. Why is that?

17 A. I -- it, it's public information. It, it shows that your
18 accounts receivable is healthy, and like how quickly they're
19 paying the invoices, that they're happy customers.

20 Q. Does that -- fair to say that at a basic level a company
21 wants to show it's collecting the money --

22 A. Yes.

23 Q. -- on its invoices?

24 A. Yes.

25 Q. While head of collections did you encounter any issues

1 related to invoices not being due or collectible until far out
2 in the future?

3 **A.** Yes.

4 **Q.** And was that a concern for you?

5 **A.** It was.

6 **Q.** And why was that a concern?

7 **A.** There were large, large amounts of money with extended
8 payment terms or pushed-out payment terms that were not due in
9 a time frame that I was familiar -- that I was used to. So
10 they would have push-out payment terms, you know, months if not
11 further out.

12 **Q.** And how is that problematic from a collections point of
13 view?

14 **A.** It's problematic because, well, the cash isn't coming in,
15 right. But then also, I mean, if you have an invoice sitting
16 out there for so long, from my experience the chances are there
17 could be more problems or delays in actually collecting that
18 payment. People change positions or approvers or things like
19 that, so there's more chance for it to be problematic.

20 **Q.** Did you speak with Mr. Chamberlain about the past due debt
21 at Autonomy, past due accounts?

22 **A.** Yes, I did, regularly.

23 **Q.** You had been involved in working in collections trying to
24 collect money debts since you had joined Interwoven in 2000; is
25 that right?

1 A. That's correct, ten years, about ten years.

2 Q. Ten years. And ordinarily what process would you follow
3 to try and follow up on outstanding invoices?

4 A. Ordinarily we had a pretty defined process. The billing
5 team would generate the invoice, it would appear on my reports,
6 and in the system that I had access to; and then within about
7 ten days to 2 weeks my team would follow up with the customer,
8 reseller to confirm that they've received the invoice,
9 everything looked good, there was no questions, make sure, you
10 know, make sure everything was fine, and then continue to
11 follow up until it's going through their accounts payable
12 department and paid.

13 Q. During your time handling collections in 2009 and 2010 at
14 Autonomy, were there times where you did not proceed with your
15 ordinary process in your collection efforts?

16 A. Yes.

17 Q. Could you describe what happened that would be different?

18 A. If -- so that was our typical process. Either my team or
19 myself would be following that process.

20 Can you repeat the question?

21 Q. Yeah. What would happen at Autonomy that was different
22 with respect to your process?

23 A. Sure. There were times that I was asked to hold off on
24 collecting payment or contacting the customer, also sometimes
25 called chasing the payment.

1 Q. And who would ask you to do that?

2 A. Mr. Steve Chamberlain.

3 Q. So he would ask you to hold off on collecting payment from
4 certain resellers?

5 A. That's correct.

6 Q. And other customers sometimes?

7 A. I believe so. I can't remember exactly.

8 Q. Do you remember that happening with resellers?

9 A. Yes, mm-hmm.

10 Q. When Mr. Chamberlain told you to, you know, go hands off
11 or hold off on collecting certain payments, did you retain
12 visibility into what Mr. Chamberlain did with respect to those
13 accounts at that point?

14 A. No, I did not. I was not involved in that.

15 Q. Did you find this odd?

16 MR. SEILIE: Objection, vague.

17 THE COURT: Overruled.

18 THE WITNESS: Did I find it odd? Yes, well, yes, it
19 was different than what I was used to. I thought it was odd.
20 I didn't have more information.

21 BY MS. GREEN:

22 Q. So what did you find unusual about it?

23 A. That I didn't know the details of why I would be asked to
24 stop collecting payment. I didn't know -- I didn't have any of
25 the details or involved in any of those conversations or

1 emails.

2 Q. And fair to say that in collections and being head of
3 collections, typically collecting payment would be an area that
4 was your responsibility; is that right?

5 A. Absolutely, I was the Director of Credit and Collections.

6 Q. We're going to focus a bit more on the resellers.

7 A. Okay.

8 Q. Did you recall anything about payment collection efforts
9 with respect to a reseller called MicroLink?

10 A. MicroLink, yes.

11 Q. What do you recall about that?

12 A. MicroLink I believe was a reseller that had a substantial
13 amount of money outstanding, over -- a lot, millions.

14 Q. And from a collections perspective, what do you remember
15 about that?

16 A. That one was --

17 MR. SEILIE: Objection, vague as to time.

18 THE WITNESS: What?

19 THE COURT: Sustained.

20 BY MS. GREEN:

21 Q. In 2010 do you -- well, 2009, do you remember being told
22 anything with respect to collecting payments from MicroLink?

23 A. Yes, I was told not to. I was told it was hands off.

24 Q. And who told you to go hands off on collecting payments
25 from MicroLink?

1 A. Mr. Chamberlain.

2 MS. GREEN: I would like to show Exhibit 13078.

3 THE COURT: 13078 admitted.

4 (Trial Exhibit 13078 received in evidence.)

5 MS. GREEN: And can we make that bigger, Mr. Hasan,
6 please?

7 BY MS. GREEN:

8 Q. Is this an email from you to Percy Tejeda on May 3rd,
9 2010?

10 A. Yes, it is.

11 Q. What's the subject line?

12 A. Oh. MicroLink.

13 Q. And taking a look at that email, how much did MicroLink
14 owe Autonomy as of this date?

15 A. As of that date they owed 24.7 million.

16 Q. You testified previously they owed Autonomy a fair amount
17 of money?

18 A. That's correct.

19 Q. Is this what you were referring to?

20 A. Yes, it is.

21 Q. You're asking (As read) would you agree that I should pull
22 the MicroLink invoices out of our target calculations and lower
23 the AR for AU, Inc. by 24.7 million.

24 What is AR a reference to?

25 A. AR refers to accounts receivable.

1 Q. And AU, is that a reference to Autonomy?

2 A. That's correct.

3 Q. What were you asking here?

4 A. I was asking that since we were asked not -- my team was
5 asked not to collect on the outstanding amount, then I would
6 pull it out of our cash collection targets, our calculations,
7 and not include it.

8 Q. So you were going to pull out the 24 million from what you
9 expected to collect in at Autonomy for Q2 2010; is that right?

10 A. Yes, that's correct, yes.

11 Q. And is Matt, who is that a reference to?

12 A. The reference is to Matt Stephan.

13 Q. Who did he report to?

14 A. He reported to Mr. Chamberlain in the U.K.

15 Q. Ultimately was this 24 million removed from your
16 calculations of what you would be collecting in for that
17 quarter?

18 A. Yes, it was.

19 MS. GREEN: I would like to show Exhibit 3312, please.

20 THE COURT: 3312 admitted.

21 (Trial Exhibit 3312 received in evidence.)

22 MS. GREEN: Thank you, Your Honor.

23 BY MS. GREEN:

24 Q. Is this an email -- I'm just going to ask you a few brief
25 questions on this.

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1 Is this an email chain that was forwarded to you,
2 Ms. Prasad?

3 **A.** It was, yes.

4 **MS. GREEN:** And can we zoom out, Mr. Hasan, just to
5 give Ms. Prasad a chance to read that bottom email, and we can
6 make the bottom email bigger.

7 And then it goes on to the next page, so please take a
8 moment to read it?

9 **THE WITNESS:** Just one moment.

10 **MS. GREEN:** Please keep scrolling, Mr. Hasan.

11 **THE WITNESS:** Okay.

12 **BY MS. GREEN:**

13 **Q.** So this email discusses MicroLink and a change being made
14 to the accounts receivable in the amount of 15.9 million; is
15 that right?

16 **A.** That's correct.

17 **Q.** And let's scroll up, please.

18 Was this email forwarded to you?

19 **A.** It was.

20 **Q.** And just a high level, what did you understand to be
21 happening here with this email?

22 **A.** My understanding was that they were clearing the
23 \$15 million from our accounts receivable.

24 **Q.** Clearing the 15.9 million from the accounts receivable?

25 **A.** That's correct.

1 Q. And was this forwarded to you because accounts receivable
2 is, you know, within your purview so you need to know what
3 is --

4 A. Disappearing.

5 Q. Yes, what is disappearing.

6 Okay. Let's go to Exhibit 13336, please, 13336?

7 MS. GREEN: Yes, Your Honor. Thank you.

8 THE COURT: 13336 admitted.

9 (Trial Exhibit 13336 received in evidence.)

10 MS. GREEN: And could we make that email bigger,
11 Mr. Hasan, please?

12 BY MS. GREEN:

13 Q. This is an email that you received from Helen Ku; is that
14 right?

15 A. Yes.

16 Q. And the date of this email is July 2nd, 2010; is that
17 right?

18 A. That's correct.

19 Q. There is an attachment here entitled "Autonomy Aging
20 3/31/10."

21 A. That's correct.

22 Q. What is an Autonomy aging report?

23 A. It is basically what I was mentioning previously, the
24 accounts receivable listing.

25 Q. And there's a mention -- there's the use of the term

1 "reserve" in this email. Are you familiar with the term
2 "reserves?"

3 **A.** I am, yes.

4 **Q.** And generally what is that and how does that relate to
5 accounts receivable?

6 **A.** If there is -- it's basically setting aside monies for
7 invoices or accounts that there -- we believe we might have
8 some difficulty in collecting.

9 **Q.** Great. And let's take a look at this aging report that
10 was attached to the email.

11 **MS. GREEN:** So can we go to page 12, please,
12 Mr. Hasan.

13 **BY MS. GREEN:**

14 **Q.** Is this the start of that report, the first page?

15 **A.** It is.

16 **MS. GREEN:** Great. And let's go to page 16, and can
17 we make -- can we make the bottom section of this page,
18 starting from the MicroLink entities bigger, just so the
19 witness can see them?

20 And then scroll to the next page, please, Mr. Hasan. Oh,
21 sorry, it disappeared. Back where you were. No, the other
22 way. Sorry. Thanks. Keep scrolling that way.

23 So we see MicroLink listed there. Keep going, please,
24 Mr. Hasan.

25 \\\

1 **BY MS. GREEN:**

2 **Q.** Do you see a series of MicroLink invoices there?

3 **A.** Yes, I see several.

4 **Q.** And these are invoices that payment had not yet been
5 collected yet; is that right?

6 **A.** That's correct.

7 **MS. GREEN:** And let's look at page 13, please. And
8 can we make the section showing Capax bigger, please,
9 Mr. Hasan?

10 **BY MS. GREEN:**

11 **Q.** Do you see a series of invoices there for an entity called
12 Capax?

13 **A.** I do, yes.

14 **Q.** And that was another reseller; is that right?

15 **A.** That's correct.

16 **Q.** Did you encounter collection difficulties with respect to
17 the reseller Capax?

18 **A.** Yes, I did.

19 **Q.** And what do you recall about that?

20 **MR. SEILIE:** Objection, vague as to time.

21 **THE COURT:** Lay a foundation.

22 **BY MS. GREEN:**

23 **Q.** When do you remember -- when do you remember noticing
24 collection issues with respect to Capax?

25 **A.** I noticed collection issues when the account was escalated

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1 from one of my team members to myself -- actually, even I
2 was -- my collector was having difficulty collecting on that,
3 and I got involved. It was escalated to me, and I followed up
4 on the account with the reseller directly.

5 And I had -- there was a conversation with one of the
6 executives there at Capax. I spoke to him directly, and he had
7 told me that the end user deal for one of the deals was not
8 firmed up, was not in place. Yes, that's when I noticed there
9 were --

10 **Q.** Was the individual that you're referring to who you spoke
11 to there, Mr. John Baiocco?

12 **A.** That's correct, yes.

13 **Q.** And he told you this, it sounds like, in the context of
14 you having a conversation with him about collecting payments?

15 **A.** Yes, I was working to establish -- I was calling him to
16 establish when we could expect payment and to help coordinate
17 that, and that's when he told me on the phone.

18 **Q.** And was it your understanding that he was telling you that
19 about the end user because it was impacting when he planned to
20 pay Autonomy?

21 **A.** That's correct. He wouldn't pay us until he was paid.

22 **Q.** From your position in collections did that concern you?

23 **A.** Yeah, I was just going to say that. It concerned me
24 because if he's not going to pay us until he's paid by an end
25 user, but the end user deal is not in place, then what is the

1 likelihood of getting paid?

2 Q. And what did you do -- what did you do after receiving
3 that information from Mr. Baiocco?

4 A. I shared that with my superiors, Mr. Hogenson and
5 Mr. Chamberlain.

6 Q. And what response did you receive?

7 A. I don't know how like what the span was between sharing it
8 with them and when I was told, but I was asked not to chase
9 payment by Mr. Chamberlain specifically on a couple of the
10 reseller deals, invoices.

11 Q. Specifically on a couple of the accounts?

12 A. Yes. Yes.

13 Q. So is this an example of the situation you discussed
14 earlier in your testimony about Mr. Chamberlain directing you
15 to go hands off on collecting payment?

16 A. That's correct.

17 Q. I'm going to ask about another -- another reseller,
18 MicroTech?

19 A. MicroTech, okay.

20 Q. Did you have any issues collecting payment from MicroTech?

21 A. Yes, I remember that one, mm-hmm. I had issues collecting
22 from MicroTech. They were also a reseller, and it was very
23 similar.

24 Q. What do you remember?

25 A. MicroTech had a deal that I was trying to also confirm

1 when we could expect payment. The end user was the Vatican,
2 and I remember that because I remember the Vatican, and it was
3 a large amount. And I was told, I believe it was by the sales
4 team, that the end user deal was not in -- was not firmed up.
5 It wasn't a solid deal, yes, that's what I remember.

6 **Q.** And how did that affect you from a collections
7 perspective?

8 **A.** Well, I was tracking to collect that payment. It's out
9 there and due and wanted to collect that large amount of money
10 for the company. But if, again, if the end user deal wasn't
11 solid, they wouldn't be paying the reseller, and the reseller
12 was saying that they wouldn't be paying us.

13 **Q.** Did you escalate that issue to anyone?

14 **A.** Yes, I did.

15 **Q.** To whom?

16 **A.** To both Mr. Hogenson and Mr. Chamberlain.

17 **Q.** And what direction did you receive?

18 **A.** For that one I was asked to hold off on collecting, be
19 hands off on collecting, and to not chase payment.

20 **Q.** And who directed you to do that?

21 **A.** Mr. Chamberlain.

22 **Q.** Let's look at Exhibit 797, please.

23 **THE COURT:** 797 admitted.

24 (Trial Exhibit 797 received in evidence.)

25 **MS. GREEN:** Just to make it a little bit bigger,

1 Mr. Hasan, can we -- that's good. Actually, can we make it
2 slightly bigger, and we'll just scroll if we need to. It's a
3 little hard to read. Slightly bigger, please, Mr. Hasan. Like
4 let's do the top of the email down to the first, down to the
5 MicroTech paragraph. That's good. Thank you so much,
6 Mr. Hasan.

7 **BY MS. GREEN:**

8 **Q.** Is this an email from you to Brent Hogenson with
9 Mr. Tejeda copied on May 4th, 2010?

10 **A.** Yes, it is.

11 **Q.** You write (As read) I was hoping to catch you before you
12 left today. We have already completed the analysis of days
13 past due.

14 You mentioned two reports that you were attaching.
15 Analysis of days past due, is that again a reference to like
16 past due debt?

17 **A.** Yes.

18 **MS. GREEN:** Okay. And let's zoom in on the Capax
19 paragraph, please, Mr. Hasan.

20 **BY MS. GREEN:**

21 **Q.** You write with respect to Capax (As read) High Risk Capax.
22 I was told that this is a very difficult account to collect on,
23 and \$8 million of the \$9 million is already past due. I am
24 going to work with the collector closely to set appropriate
25 payment expectations with the Capax executives.

1 You classify Capax as high risk?

2 A. Mm-hmm, yes.

3 Q. What did you mean by that?

4 A. That there was a problem -- that I believed there was high
5 risk of -- it was at risk of not being -- the cash was at risk
6 of not being collected within a certain time frame.

7 Q. And typically how did you decide if a reseller was high
8 risk from your perspective?

9 A. If -- how would I -- repeat that, please.

10 Q. I'll reclarify. I'll clarify the question.

11 A. Okay.

12 Q. In this case what caused you to determine that Capax was
13 high risk?

14 A. Well, they were first -- they were past due. I had been
15 informed that it was difficult to collect on, and that I --
16 it's difficult to collect on.

17 Q. And at this point in time were they past due on 8 million
18 of the \$9 million that they owed?

19 A. Yes, that's correct.

20 Q. Let's zoom out and look at the MicroTech paragraph,
21 please.

22 Thank you so much.

23 You write (As read) High Risk - MicroTech.

24 As mentioned, the Autonomy, Inc. team had indicated that
25 this was a "hands off" account.

1 What did you mean by that?

2 **A.** That I was asked -- that we shouldn't be collecting on it.

3 **Q.** And is that a reference to what you previously discussed
4 with me about being told to go hands-off by Mr. Chamberlain on
5 collecting?

6 **A.** Yes, that's correct.

7 **Q.** And, again, here you've designated MicroTech high risk?

8 **A.** Yes.

9 **Q.** Is that because of the difficulty you foresaw collecting
10 the money?

11 **A.** It was. And if no one is -- if I may. If the collectors
12 are not working to collect the payment to make sure it comes in
13 on time, if no one is doing that, then there's risk that it
14 won't come in on time.

15 **MS. GREEN:** Understood. And zooming out, please,
16 Mr. Hasan, and let's zoom in on the bottom two paragraphs with
17 the write-offs. So, no, starting from the one above, please.
18 Thank you so much.

19 **BY MS. GREEN:**

20 **Q.** We're going to talk about write-offs in a bit more detail
21 later, but did you propose certain write-offs in this email?

22 **A.** Yes, I did.

23 **Q.** What is a write-off?

24 **A.** A write-off would be -- a write-off would occur when an
25 invoice is deemed uncollectible.

1 Q. And are you writing it off -- what are you writing it off
2 of, just in layman's terms for our benefit?

3 A. Sure. So then you would be removing it from the accounts
4 receivable.

5 Q. Thank you so much.

6 And have you had experience with write-offs during your
7 employment prior to joining Autonomy?

8 A. Yes.

9 Q. At Autonomy what was your role with respect to write-offs?

10 A. My role was to review the accounts receivable and identify
11 those accounts that were uncollectible, and then propose --
12 compile that and propose it to management.

13 Q. And just looking at the example here, the top paragraph,
14 you're discussing certain write-offs that were approved to be
15 written off by Cambridge but then were then put back on the
16 books.

17 What is Cambridge a reference to?

18 A. The Cambridge finance team, yeah.

19 Q. The Cambridge finance team of Autonomy?

20 A. Yes.

21 Q. And in this scenario what did you mean when you said they
22 were approved to be written off but then put back on the books?

23 A. There were several invoices that were on the accounts
24 receivable, and many -- they were past due, very old, and then
25 they were credited in the system and I guess approved to be

1 written off, but then they reappeared on the accounts
2 receivable. They were put back on the books.

3 Q. Do you know why that happened?

4 A. I don't.

5 Q. And you mentioned they were very old. We see a reference
6 here to 300 to 1600 days past due?

7 A. Yes.

8 Q. In your experience is, you know, 1600 days past due, do
9 you consider that a pretty significant past due amount?

10 A. That's very significant.

11 Q. And you attached spreadsheets to this email; is that
12 right?

13 A. That's correct. Yes, that's correct.

14 Q. And you previously reviewed those spreadsheets; is that
15 right?

16 A. Yes.

17 Q. We're going to look at those. But back to resellers, and
18 we've been talking about resellers and end customers, was a
19 primary reason you were given from the resellers as to
20 collections the reason they were not paying was because of this
21 issue with not having an end user in place?

22 A. Yes, that -- we talked about a couple of resellers, but
23 there were several.

24 Q. We're going to look at one of those attachments.

25 MS. GREEN: Mr. Hasan, could you open 790 -- 797-0005.

1 It's in Excel, please.

2 **THE COURT:** Is that a different exhibit.

3 **MS. GREEN:** No, it's the same exhibit. It's just the
4 attachment. Thank you, Your Honor.

5 And can we go to tab -- oh, you've opened it in pdf.
6 Okay. Great. We'll use the pdf version.

7 **BY MS. GREEN:**

8 **Q.** Well, while we're on the first page, was this one of your
9 attachments to the email?

10 **A.** Yes, I believe so.

11 **Q.** Let's go to page 46 of the pdf.

12 I know this is small, so we're going to zoom in on the
13 relevant rows.

14 **MS. GREEN:** Mr. Hasan, can you zoom in on the rows
15 where the MicroTech is listed. Yep, perfect.

16 Still very small, so if you need this to be bigger, let me
17 know, and I'll just try to pull out the relevant information.

18 **THE WITNESS:** I can see it, sure.

19 **BY MS. GREEN:**

20 **Q.** Do you see a series of MicroTech invoices here?

21 **A.** Yes, I do.

22 **Q.** And these are outstanding invoices; is that right?

23 **A.** That's correct.

24 **Q.** I want to draw your attention to the last row that is
25 zoomed in. And I know it's small, so I'll bring out some of

1 the numbers there.

2 Do you see an invoice that was dated March 31st, 2010?

3 **A.** That's correct.

4 **Q.** And it had a due date of June 29th, 2010; is that right?

5 **A.** Yes.

6 **Q.** What was the amount on that invoice?

7 **A.** That was \$11,550,000.

8 **Q.** And who is the supposed end customer listed for that
9 invoice to MicroTech?

10 **A.** That is the Vatican library. That is the one that I
11 mentioned previously.

12 **Q.** The one that you mentioned previously where you were
13 having difficulty collecting and were told to go hands-off?

14 **A.** Yes, and that there was -- the end user deal was not in
15 place.

16 **MS. GREEN:** Let's look at Exhibit 13090, please.

17 Could we please admit it? It's not yet admitted. Sorry,
18 Your Honor. May we admit Exhibit 13090?

19 **THE COURT:** Oh, sorry, 13090, is that what you said?

20 **MS. GREEN:** Yes, please. Thank you.

21 **THE COURT:** I was thinking about something else.

22 Okay. Thank you. 13090 admitted.

23 (Trial Exhibit 13090 received in evidence.)

24 **MS. GREEN:** Thank you so much, Your Honor.

25 **THE COURT:** Sorry.

1 **MS. GREEN:** And let's go -- let's start with page 7 of
2 this email, please, Mr. Hasan. And can we zoom in to make the
3 email -- no, you don't need to do -- let's just do the text
4 portion, so we can -- the text is so small. Thank you so much,
5 Mr. Hasan.

6 **BY MS. GREEN:**

7 **Q.** Do you see an email here from Mr. Chamberlain dated May 7,
8 2010?

9 **A.** Yes, I do.

10 **Q.** And you received this email?

11 **A.** Yes.

12 **Q.** What's the subject line of this email?

13 **A.** The subject line is Barclay's financed deals.

14 **Q.** Did Mr. Chamberlain obtain financing from Barclay's for
15 certain deals that had not been paid by the Autonomy customer?

16 **A.** Yes, that's correct.

17 **Q.** And I'm not going to make you go through every page of
18 this, so we'll just scroll.

19 **MS. GREEN:** Can we zoom out please, Mr. Hasan, and
20 just scrolling down, because it's quite long.

21 **BY MS. GREEN:**

22 **Q.** Does this email list some of the deals where
23 Mr. Chamberlain had obtained financing?

24 **A.** Yes, that's correct.

25 **MS. GREEN:** And let's go to page 17, please. Great.

1 And can we zoom in on the text?

2 **BY MS. GREEN:**

3 **Q.** Is this what he wrote after he listed those transactions?

4 **A.** Yes, that's correct.

5 **Q.** What did you understand Mr. Chamberlain to be
6 communicating here?

7 **A.** My understanding was that these particular deals above had
8 been financed through Barclay's where Barclay's would pay -- so
9 these invoices are invoices to end users or partners.

10 Barclay's would pay the invoices, we'd receive the money, apply
11 it to the outstanding invoices so they would be removed from
12 the AR, accounts receivable, and then we would still collect
13 the money from the end user or partner. And when that money
14 came in, we would pay Barclay's back or the money would go to
15 Barclay's.

16 **Q.** That was your understanding about how this should work; is
17 that right?

18 **A.** That was my understanding, yes.

19 **Q.** If the end user or the customer or the party that had
20 transacted with Autonomy initially had been paying its
21 invoices, would there have been anything to finance with
22 Barclay's, in your mind?

23 **A.** Would there be a need to?

24 **Q.** Right.

25 **A.** I wouldn't think so.

1 Q. Because the money had already been paid?

2 A. That's correct, it would come direct.

3 MS. GREEN: And let's go to page 3, please. And can
4 you zoom in on Mr. Chamberlain's email, please.

5 BY MS. GREEN:

6 Q. So after that email did you receive another email from
7 Mr. Chamberlain dated May 12, 2010?

8 A. Yes.

9 Q. And he writes "give me a list of blue chip customers that
10 you think we can finance."

11 A. Yes.

12 Q. And just at a high level, what did you understand
13 Mr. Chamberlain to be seeking here?

14 A. He wanted a list of additional customers that we could
15 finance their receivables through Barclay's or something
16 similar that we had in the past.

17 MS. GREEN: And going to page 1, please. And let's
18 zoom in on the email, please. Thank you so much.

19 BY MS. GREEN:

20 Q. And in response to Mr. Chamberlain's email, did you put
21 together a list of deals that you thought could be financed,
22 potentially?

23 A. I did.

24 Q. And what was your basis for putting something on that
25 list?

1 A. I put -- my basis was to include invoices that were not
2 yet due but from customers that may not pay promptly.

3 Q. And let's look at -- you attached an Excel; is that right?

4 A. Yes.

5 Q. And to be clear, this went to Mr. -- this email went to
6 Mr. Tejeda; is that right?

7 A. That's true.

8 Q. And you can read your email, but were you sending this to
9 Mr. Tejeda -- or why were you sending this to Mr. Tejeda first?

10 A. This -- we didn't do -- we didn't do a lot of financing in
11 the past, so I was kind of bouncing it off of him to get his
12 opinion and include him on that.

13 Q. His opinion as to whether this might be what
14 Mr. Chamberlain is looking for?

15 A. Correct, yes.

16 Q. Great. And let's look at the Excel, please. And I know
17 this is dense, so we're just going to look at one item on each
18 tab of these.

19 So this is your summary of what you proposed potentially
20 looking to finance; is that right?

21 A. Yes.

22 Q. Let's look at tab 2, which is the Autonomy tab -- and,
23 Yep, that's great. Let's just stop there.

24 Do you see Capax and MicroLink invoices listed there?

25 A. Yes.

1 Q. And were these some of the invoices that you thought might
2 be good candidates for this financing?

3 A. Yes.

4 Q. Was that because you foresaw --

5 A. Difficulties collecting.

6 Q. Great. And let's look at tab 4, please, the Zantaz tab,
7 and let's zoom in on the top invoice.

8 Do you see an entity entitled Discovery Technologies
9 there?

10 A. Yes, I do.

11 Q. And was that another reseller?

12 A. That's correct.

13 Q. And were you proposing an invoice here that
14 Mr. Chamberlain might want to consider for financing?

15 A. Yes.

16 Q. Let's look at Exhibit 13084.

17 **THE COURT:** 13084 admitted.

18 (Trial Exhibit 13084 received in evidence.)

19 **BY MS. GREEN:**

20 Q. We're going to focus a little bit on Capax now.

21 A. Okay.

22 Q. Do you recall that email that we looked at previously
23 where you mentioned, you know, Capax; you had designated Capax
24 as high risk, and you mentioned you were going to try and
25 follow up regarding payments; do you remember that?

1 A. I do, yes.

2 Q. Okay. So did you follow up with Capax regarding the
3 payments it owed to Autonomy?

4 A. Yes, I did.

5 Q. And let's go to page 2, please, and let's zoom in on the
6 bottom email, just the very bottom one where it says from Reena
7 Prasad.

8 So that's the email you send on April 29th, 2010.

9 MS. GREEN: And let's go to the next page, please,
10 Mr. Hasan, just so she can see the email, and can we zoom in on
11 that email, please?

12 BY MS. GREEN:

13 Q. And this is an email that you write to Nancy Gilman and J.
14 Baiocco at Capax; is that Mr. Baiocco at Capax?

15 A. Yes, Mr. John Baiocco, I believe.

16 Q. And the subject line says "Autonomy invoices equal
17 8.1 million due?"

18 A. Yes.

19 MS. GREEN: And can we zoom out of that, please, so we
20 can see the table below, and can we zoom in on the table?

21 BY MS. GREEN:

22 Q. What was your purpose in sending this email to Mr. Baiocco
23 at Capax?

24 A. My purpose was that a member of my team was having
25 difficulty collecting or getting a response or confirmation of

1 payment. So because of the sizable dollar amount, I reached
2 out to them to try to coordinate payment with them and confirm
3 when we could expect to receive it.

4 **Q.** And did the outstanding invoices here total 15.3 million?

5 **A.** Yes.

6 **Q.** 8 million of which was past due?

7 **A.** Yes.

8 **Q.** And just briefly, let's look at your email on page 1.

9 **MS. GREEN:** And can we zoom in on the middle email,
10 please. Yes, perfect.

11 **THE WITNESS:** Mm-hmm.

12 **BY MS. GREEN:**

13 **Q.** Who -- you write this email on May 12th, 2010 to Rex
14 Andrada and Dean Revard copying Cynthia Watkins.

15 Who were -- who was Rex Andrada?

16 **A.** Rex worked on the collections team out of our San
17 Francisco office.

18 **Q.** And who was Dean Revard?

19 **A.** I believe he was part of the sales team.

20 **Q.** And who was Cynthia Watkins?

21 **A.** Ms. Watkins worked in finance out of the U.K. office.

22 **Q.** And you write (As read) Thanks, Rex. You can call, but do
23 not threaten additional legal escalation, et cetera. I
24 understand this is quite a sensitive account. Simply call in
25 and ask them if they have a status update on the below invoices

1 and ask when we can expect to receive payment.

2 What did you mean when you wrote "I understand this is
3 quite a sensitive account."

4 **A.** I had been told that there -- that this account -- let's
5 see. I had been told that there were discussions outside of
6 what I was familiar with, meaning not to push them so hard. I
7 was --

8 **Q.** Had you received direction about not pushing Capax for
9 payment?

10 **A.** Yes, that's correct.

11 **Q.** Who provided that direction to you?

12 **A.** Mr. Chamberlain.

13 **Q.** And is that why you were terming them a sensitive account
14 here?

15 **A.** That's correct, yes.

16 **THE COURT:** All right. Ladies and Gentlemen, we'll
17 take our recess today.

18 Remember the admonition given to you: Don't discuss the
19 case, allow anyone to discuss it with you, form or express any
20 opinion.

21 You're excused. Thank you very much. Long day. I
22 appreciate it.

23 (Jurors exit courtroom.)

24 (Proceedings were heard out of presence of the jury:)

25 **THE COURT:** Okay. Let the record reflect, all the

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1 jurors have left.

2 What I'd like to do now is inquire into the juror who has
3 had contact with the U.S. Attorney's Office. Then we'll take a
4 recess and we'll resume and take care of all the -- I know you
5 want to put something on the record, and there's another issue
6 with this witness, and so forth and so on.

7 So we're just going to do one thing at a time.

8 The juror now, Mr. Lincenberg.

9 **MR. LINCENBERG:** The Court wanted us to provide -- I
10 wrote out some questions.

11 **THE COURT:** Pardon?

12 **MR. LINCENBERG:** The court asked some questions. I
13 wrote out a few questions.

14 **THE COURT:** That's great. Okay. I'll take them.

15 Let me indicate, I looked at the questionnaire. He didn't
16 answer any question that I can find in any misleading fashion.
17 Do you know what you were referring to?

18 **MR. WEINGARTEN:** We'll get it.

19 **THE COURT:** Okay.

20 **MR. BAUM:** It's question 44.

21 **THE COURT:** Which one is it?

22 **MR. BAUM:** Sorry, Your Honor, it's question 44.

23 **THE COURT:** Question 44. Question 44 is as follows:
24 Have you or any family member ever had occasion to contact the
25 United States Attorney's Office or District Attorney's Office,

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1 including -- okay. And he says no.

2 Okay. So that literally may be --

3 **MR. LEACH:** Your Honor, first the date the
4 questionnaire was completed I think is early March, before his
5 contact with the AUSA on March 13. So at the time he made this
6 statement I think it was true.

7 And the context of the statement is have you reported
8 something to law enforcement; have you been the victim of a
9 crime? I don't read that question as saying do you have a
10 friend or colleague or have you ever reached out to somebody
11 about career advice at the U.S. Attorney's Office.

12 **THE COURT:** Okay. I think it's truthful. I think it
13 was truthful, but let's -- let me look at Mr. Lincenberg's
14 questions.

15 **MR. LEACH:** We've not seen this, Your Honor.

16 **THE COURT:** I understand.

17 **MR. LINCENBERG:** And it would be helpful --

18 **THE COURT:** Sorry, you should use the microphone. It
19 would be helpful. What?

20 **MR. LINCENBERG:** Your Honor, it might be helpful to
21 have the AUSA here who had the communication with the person.

22 **THE COURT:** I don't know. Let's see. Let's see what
23 he says. Let's see what the witness says. Take it one step at
24 a time. It might be helpful, it might be meaningless, I don't
25 know. I'm not going to have a big grand thing if I don't need

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1 it.

2 **MR. LINCENBERG:** No, but we have an email from
3 Mr. Leach passing on information from somebody else who has
4 more firsthand information who is in the building.

5 **THE COURT:** Okay. Right. Okay. Perfect. Have a
6 seat, everybody. Bring in the juror. He can just sit in the
7 jury box.

8 (Juror enters courtroom.)

9 **THE COURT:** Good afternoon. You probably didn't think
10 you'd be here, but we have a few questions, and I'll tell you
11 what has occurred so you understand why we're asking you some
12 questions.

13 We received information that you had a contact, that is, a
14 conversation with someone in the United States Attorney's
15 Office during the last week or so.

16 **A JUROR:** Yes, before I was selected for the jury.

17 **THE COURT:** Before you were selected for the jury,
18 right. And it was a contact with -- do you recall the name of
19 the U.S. Attorney that you spoke to.

20 **A JUROR:** Yes, Sailaja Paidipaty, I believe was her
21 name.

22 **THE COURT:** Okay. And during that -- let me break it
23 down in pieces for you.

24 Have you had a contact with any other Assistant U.S.
25 Attorney?

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1 **A JUROR:** No.

2 **THE COURT:** Do you know these people who are seated at
3 counsel table?

4 **A JUROR:** No.

5 **THE COURT:** Okay. And with respect to the attorney
6 that you did know, how did you know that attorney?

7 **A JUROR:** She is a friend of a friend.

8 **THE COURT:** A friend of a friend.

9 Okay. Have you ever had any discussion or heard any
10 discussion by the friend of a friend or the U.S. Attorney's
11 office about this case that you're now hearing?

12 **A JUROR:** Not at all.

13 **THE COURT:** Okay. You indicated that what, you are a
14 law student or about to be a law student?

15 **A JUROR:** I am going to be a law student in August.

16 **THE COURT:** Congratulations. Where are you going?

17 **A JUROR:** Northwestern Pritzker.

18 **THE COURT:** Okay. And we were told or advised that
19 there was some discussion about your interest in possibly going
20 into the United States Attorney's Office, a United States
21 Attorney's Office; is that a fair characterization?

22 **A JUROR:** I had asked her about her career when I was
23 exploring whether I wanted to go to law school back a year,
24 year and a half ago.

25 **THE COURT:** And is that the reason for the

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1 communication, that is, you wanted to get her opinion about
2 what it's like to be a lawyer?

3 **A JUROR:** Yeah. When I reached out to her, I reached
4 out to her a week ago prior to showing up for jury selection,
5 and I wanted to speak to her, now that I had gotten my
6 acceptance, about her career, where she had worked, how she
7 found work in the private sector versus government, and any
8 advice she would have for anybody going into law school, so,
9 yeah.

10 **THE COURT:** And was that the only contact you've had
11 with her recently?

12 **A JUROR:** That's the only contact I had with her
13 recently.

14 **THE COURT:** Okay. Now, let me ask a different
15 question. Obviously, I assume that she was in your
16 conversation with you forthcoming, friendly, helpful,
17 hopefully. But the question we need to know is whether because
18 of your contact with her, whether you have any -- whether
19 you're favorably disposed to, you know, to consider the United
20 States Attorney's position here as distinct from giving both
21 sides an absolute fair trial; do you understand what I'm
22 saying?

23 In other words, is the field, and only you can tell me
24 this, is the field absolutely even between the U.S. Attorney's
25 Office and the defense in terms of how you would listen to

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1 their arguments and the evidence?

2 **A JUROR:** I can understand the concerns, but I can
3 assure all that the field is absolutely even in that regard. I
4 was speaking to Salija purely because I met her at a party,
5 realized she was a lawyer, immediately wanted to talk to her as
6 an additional insight as I made my decision considering I don't
7 know many attorneys.

8 **THE COURT:** Okay. And if you were to rule in favor of
9 the defense in this case, the end of the case, would that cause
10 you any concern in terms of your career or opportunities to be
11 a lawyer?

12 **A JUROR:** Not in the slightest.

13 **THE COURT:** Okay. All right. So why don't you go
14 back there. I'm going to have a little discussion with the
15 lawyers, and we can see where we go from there.

16 **A JUROR:** Sure. Absolutely.

17 **THE COURT:** Thank you.

18 (Juror exits courtroom.)

19 **THE COURT:** Mr. Lincenberg.

20 **MR. LINCENBERG:** Just to note, Your Honor, I know the
21 Court just had a chance to look at the email, but the
22 conversation according to Mr. Leach's email, which is the only
23 information we have, was actually two years ago. That was
24 supposedly more at length, not --

25 Apparently there was a second conversation a week ago.

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1 But as I read your email, Mr. Leach, it was that there was a
2 more extended conversation two years ago.

3 **MR. LEACH:** I didn't hear that at all, Your Honor. I
4 heard the defendant describing one conversation.

5 **THE COURT:** He's not the defendant. He's a juror.

6 (Laughter)

7 **MR. LEACH:** It's been a long day.

8 **THE COURT:** He's not a defendant yet.

9 **MR. LEACH:** Which is why it's great that I think he
10 should be excused.

11 **THE COURT:** He'll never go to law school after this.

12 (Laughter)

13 **MR. LEACH:** Exactly. I apologize, Your Honor.

14 **THE COURT:** Oh, not to me.

15 **MR. LEACH:** I think he was describing the conversation
16 he had back, I think it was March 2020. I also think he was
17 describing the more recent reach-out that he made that didn't
18 amount to anything.

19 **THE COURT:** The email says May, and he confirmed that.
20 He said a couple years ago he reached out to her, and then he
21 phoned her again when he got admitted to law school, and that's
22 the second conversation.

23 **MR. LINCENBERG:** I'm not sure what took place in the
24 conversation in May of 2022. I know the Court inquired, as I
25 heard it, about a conversation a week ago or so.

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1 **THE COURT:** I think he said that -- well, what I heard
2 him say was that he reached -- that she was a lawyer, he had
3 met her, and he wanted to discuss whether to go to law school,
4 whether he should pursue a career in the law.

5 Subsequently, when admitted to the law school, he phoned
6 her again. That's -- those are the two contacts that you're
7 consistent with.

8 Well, okay. I see no basis to recuse him. Do you want me
9 to admonish him? Is there anything I should say?

10 **MR. LINCENBERG:** I don't want an admonition. Just for
11 the record I would say --

12 **THE COURT:** Go ahead.

13 **MR. LINCENBERG:** -- I believe he should be excused.
14 We went through a jury questionnaire and a voir dire if
15 somebody had contact with the U.S. Attorney's Office, in the
16 middle of the voir dire process, on the day that the Court is
17 asking all the jurors: Is there anything else we should know,
18 and so forth, he's communicating with their colleague down the
19 hall.

20 It seems inappropriate. It seems information we would
21 have wanted to have known during voir dire. It seems to me
22 it's a basis for excusing a juror.

23 **THE COURT:** Well, you have the information now. So
24 the question is, if you're asking me the question -- you're not
25 asking me any question -- but if you were asking me the

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1 question would I excuse him for cause, the answer is I would
2 not.

3 **MR. LINCENBERG:** That's not the question. The
4 question is whether that information would have been important
5 to us in assessing whether to keep him on the jury.

6 **THE COURT:** Okay. I understand that. I understand
7 that. Did you not know he was a law student?

8 **MR. LINCENBERG:** No, we did not know. He's not a law
9 student.

10 **THE COURT:** Well, he's not a law student yet.

11 **MR. LINCENBERG:** I don't believe there was any
12 information, correct me if I'm wrong, I don't believe there was
13 any information about him intending to go to law school.

14 **MR. LEACH:** I didn't see any information in the
15 questionnaire about an interest in law school, Your Honor, but
16 I don't think that's relevant at all.

17 **THE COURT:** Okay. Well, is there any other question
18 you want me to ask him?

19 **MR. LINCENBERG:** Well, I honestly would like to hear
20 from the AUSA about the details of their conversation, but --

21 **THE COURT:** That's not unreasonable. That's not
22 unreasonable. But we're not going to do it today. That's
23 unreasonable.

24 Anything else I need to ask him?

25 **MR. LINCENBERG:** No.

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1 **THE COURT:** Okay. Fine. So subject to hearing
2 something that is of concern by the Assistant U.S. Attorney,
3 and I think it's perfectly legitimate. She had a conversation
4 with a juror, so I think you're entitled -- we're all entitled
5 to know -- we've heard one version of it, and now we're
6 entitled to hear the rest of it.

7 Okay. That's fine. Would you thank him very much. Tell
8 him we'll see him tomorrow as part of the jury.

9 Well, now that I'm up, I guess we can talk about a couple
10 of things before we end for the day. Why don't we deal with
11 the record on the matter that I ruled -- well, I didn't give
12 any reasons for it. I just said I'll rule, but I think it is
13 a -- yeah, if you would file that under seal, or whatever it
14 is, and Mr. Lincenberg's questions as well so it's part of the
15 record, if you want it filed.

16 **MR. LINCENBERG:** That's fine, please.

17 **THE COURT:** Yeah, okay.

18 **MR. HEBERLIG:** I can explain.

19 **THE COURT:** Well, I can tell you what I think.

20 **MR. HEBERLIG:** Sure. My purpose may not have been
21 clear. Obviously I didn't want to do any speaking colloquy
22 with the jury here. But my purpose was not for the truth of
23 what was in the information; it was to impeach his testimony
24 that it would be unreasonable or was unreasonable for
25 Autonomy --

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1 **THE COURT:** You were going to impeach him on a
2 document that was created subsequent to the time of conspiracy,
3 of the action. It was I forget which exhibit number it was.

4 **MR. HEBERLIG:** Explain. So he left --

5 **THE COURT:** But that's right; isn't that correct?
6 That is, whether it was a 10-K, or whatever it was, was for a
7 period subsequent to the incident.

8 So he said, as I recall his testimony, he said no, I don't
9 think it would be disclosed, whatever it is, or listed, and
10 something about hardware sales. And you want to impeach him on
11 the company's subsequent -- by the way, a company he
12 identified, I got that.

13 **MR. LEACH:** His company.

14 **THE COURT:** Yeah, their subsequent whatever it was.

15 **MR. HEBERLIG:** 10-K annual statement.

16 **THE COURT:** I get them all confused.

17 **MR. HEBERLIG:** I just make the proffer.

18 **THE COURT:** You go right ahead.

19 **MR. HEBERLIG:** So the essence of his testimony was it
20 was unreasonable and misleading for Autonomy not to disclose
21 hardware as a separate line item in his financials, and I got
22 him to confirm that on cross-examination. And in part he said
23 it's because the amount of the hardware was between 5 and
24 10 percent of Autonomy's software sales.

25 So the proffer of what's in the 10-K, he leaves Autonomy

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1 in April of 2012, and he immediately joins this company TIBCO;
2 it's a software company, a public software company, and he's in
3 their finance department, presumably knowledgeable of their
4 financial statements.

5 TIBCO, like Autonomy, discloses its revenue in two line
6 items: License revenue and service revenue. And, according to
7 this form 10Q, they not only sell hardware, but they disclose
8 that hardware is roughly 5 percent of revenue, okay.

9 When you look at their revenue, 60 percent of the billion
10 dollars in revenue is from services, 40 percent is from
11 hardware. 5 percent of a billion dollars, \$50 million.

12 The hardware, excuse me, the software revenue they're
13 selling, and including the hardware revenue within in a single
14 line item, is \$400 million. So they're selling more than
15 10 percent in hardware, just more likely than Autonomy was, and
16 yet disclosing it in the single line item, license revenue.

17 And it's not for the truth of the matter asserted, it's to
18 impeach his testimony that no reasonable company -- or it was
19 misleading for Autonomy to present its financials that way when
20 the next month he went to another company who did it the exact
21 same way. That's the proffer.

22 **MR. LEACH:** I just think it's comparing apples and who
23 knows what, Your Honor. Who knows who prepared the 10-K, what
24 their auditors were telling them, what the board was telling
25 them, what the audit committee was telling them, you know, what

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1 the real composition of the revenue of this completely separate
2 company in 2012 was. I just think it's massively confusing.

3 **MR. HEBERLIG:** It's explained in the 10-K, which I can
4 walk him through.

5 **THE COURT:** Yeah, but what happens -- what happens if
6 company A is accused of not disclosing a dishonest financial.
7 So this person goes to company B. And by the way, they do the
8 same thing that company A does.

9 **MR. HEBERLIG:** Right.

10 **THE COURT:** Okay. And to which I say, why is that
11 necessarily relevant? If you have, quote, two wrongdoers --

12 **MR. HEBERLIG:** Totally agree.

13 **THE COURT:** If you have two wrongdoers, and it doesn't
14 become relevant qua impeachment just to ask him the question:
15 Well, in the company you joined; did they do it the same way?
16 Which I think is what the impeachment is.

17 **MR. HEBERLIG:** The impeachment --

18 **THE COURT:** And I don't -- then you create your own
19 impeachment. And in my view, while it may be relevant, it's
20 outweighed by 403 because it introduces all sorts of questions
21 as to what's going on in TICO or TIBO, or whatever the heck
22 they are, and what they're looking at, and how they're getting
23 advice, and whatever the issue is. So it creates a sideshow,
24 an additional issue as to what did TI --is it TICO?

25 **MR. HEBERLIG:** TIBCO.

THE COURT: TIBCO, what did they do and why did they do it? That's, actually, no, it's not coming in on that issue, because it seems to me it's classic 403.

I'm trying to keep this case just right on what happened during up to 2000 to the acquisition, and this is outside that period of time, that's number 1. I think it introduces outside issues that will have a tendency to confuse and not illuminate the jury. I don't know that it directly impeaches this particular witness because I don't know to what extent he had control over it, and to what extent he knew about it, and to what extent he was involved in those transactions.

So on all of those bases I'm going to overrule your offer.

Now, that's not to say that you couldn't bring in some witness who says, oh, by the way, I think companies do that all the time during this period of time. I'm not saying you have to accept his testimony as gospel or whatever.

Is it right that God created civil litigation?

MR. HEBERLIG: Only for certain cases.

THE COURT: Because yesterday, Mr. Weingarten, you said that. God created civil litigation. I was wondering who to blame. Now I know.

(Laughter)

By the way, who created criminal litigation? That's another issue.

MR. HEBERLIG: Maybe the Devil, I don't know.

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1 May I just confirm then that this would not be a subject
2 the Government intends to get into on redirect?

3 **THE COURT:** Oh, no, I don't think you can get into it
4 on redirect, absolutely. I mean, if they get into it on
5 redirect, you can do whatever you want to do.

6 **MR. LINCENBERG:** Okay. I wanted to just add a
7 post-ruling argument onto that, because what was really
8 interesting with this witness is how many times --

9 **THE COURT:** This witness being?

10 **MR. LINCENBERG:** Mr. Ganesh. Ganesh, I can't
11 pronounce his last name.

12 With Ganesh, what was really interesting is how many times
13 the Government led him into this conversation about how unusual
14 something was. And here counsel gets up and the very two
15 companies he's working for are disclosing something the same
16 way, and the Court is not letting me even cross-examine --

17 **THE COURT:** Are you teaming up on me, is that it? You
18 don't think he did a good enough job?

19 **MR. LINCENBERG:** He did as good of a job as I've ever
20 seen, frankly. I think he's phenomenal. But I just ask the
21 Court not to be too tied down to while this is a little
22 different date than 2011 --

23 **THE COURT:** Well, I'm a little tied down to it. I
24 mean, you want to -- do you want a ground rule? You want to
25 see how I'm trying the case from a judge's point of view. Yes,

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1 indeed, I am very concerned about time periods. I'm very
2 concerned that when we start to exceed them, the scope of the
3 case goes wildly out of control, and, you know, guess what?
4 We're not finished one witness yet on day 3, so we probably
5 would have finished with this gentleman, but...

6 **MR. LINCENBERG:** But we're not talking about the
7 post-acquisition issue here. We're talking about
8 impeachment --

9 **THE COURT:** I understand that.

10 **MR. LINCENBERG:** -- about statements made by witnesses
11 for years and years and years after --

12 **THE COURT:** Impeachment is an entirely appropriate way
13 of dealing with witnesses. However, in doing so, I could look
14 at 403. And in this case I find, for the reasons I've already
15 stated, that I'm not going to permit that impeachment piece
16 right there. Other pieces of impeachment, go ahead. I mean,
17 you've already had him for two hours on the stand, or
18 thereabouts, and he'll be on the stand for another hour
19 tomorrow, and then I don't know whether there will be any
20 redirect or not.

21 But, you know, you'll get your fair shot. You'll get a
22 fair shot. Every exhibit has come in.

23 **MR. HEBERLIG:** Understood.

24 **THE COURT:** Not a problem here.

25 So what else -- I thought there was something else.

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1 Yes, go ahead, please.

2 **MR. HEBERLIG:** This is the second witness, the woman
3 who is on the stand right now.

4 **THE COURT:** Right.

5 **MR. HEBERLIG:** And there are two issues that are
6 somewhat related. I'll just give you the brief background.

7 So she, as you know, worked for Mr. Hogenson. Not only
8 was Mr. Hogenson terminated, but she and another colleague were
9 also terminated, Reena Prasad and Percy Tejeda.

10 So there was pre-trial litigation after the Government
11 gave 404(b) notice that the terminations were 404(b) evidence
12 they wanted to introduce. We moved to exclude it on two
13 grounds: One, that just the fact of the firings was not proper
14 404(b) notice. Fine, that was one issue. The second was even
15 if you conclude that is appropriate 404(b), there are
16 settlement agreement with Autonomy including the amounts that
17 they were paid from Autonomy should not come into evidence
18 because they're unduly prejudicial. They might suggest to the
19 jury an admission of liability.

20 So we litigated that issue. And in the Government's
21 opposition or response to our motion, they included a footnote
22 that says: The Government does not intend to offer evidence of
23 the settlement agreements with Hogenson, Tejeda and Prasad, but
24 reserves the right to do so depending on the cross-examination
25 of the witnesses.

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1 So we dropped that issue in our reply brief. The Court
2 had no occasion to rule on it because it was no longer a live
3 issue.

4 We got the Government's exhibit list for this witness I
5 think yesterday, and they now want to introduce as substantive
6 evidence her settlement agreement and the amount that she was
7 paid.

8 We understand that the terminations the Court has ruled
9 are relevant and are coming in, we accept that ruling. But
10 this is a separate category that the Court didn't rule upon or
11 consider specifically.

12 **THE COURT:** That's perfectly fair to raise it.

13 **MR. HEBERLIG:** Okay. And the related issue is that a
14 number of the witnesses' 302s she has reported that as a result
15 of the termination, some years on, perhaps continuing to today,
16 she suffers from PTSD, acute depression and anxiety, and the
17 Government would like to elicit that from her, and our position
18 is it's irrelevant, and it's prejudicial under 403, and this is
19 not a wrongful termination or intention of emotional distress
20 case. Those are the two issues.

21 **THE COURT:** Okay. Well, I don't think -- well, of
22 course is it really the Government's intention to go into her
23 emotional state, and so forth?

24 And I guess, in part, I mean, in fairness to the position
25 of the parties, we haven't heard any cross-examination, and I'm

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1 not quite sure how the cross-examination goes, because I
2 haven't heard it, but if it goes to, well, you have a -- I
3 don't know how it goes. Does it go, well, you've got a grudge
4 against the defendant. Does it go -- I don't know what's going
5 to be shown.

6 I would say ordinarily, absent some type of
7 cross-examination that I think opens the door, both those
8 things would be out, especially the PTSD and her emotional
9 state, and so forth. You know, unless something happens, I
10 would not allow that in because it's highly prejudicial. It
11 blames Autonomy for her present state of mind and her
12 condition, and that's very, very -- that's highly prejudicial,
13 so I wouldn't let that in.

14 Number 2, as to the settlement agreement, and I don't know
15 what the amounts are in the -- what are --

16 **MR. HEBERLIG:** 75k for this witness. 55 to her, 20 to
17 her lawyer.

18 **MR. LEACH:** Your Honor, it's 750,000.

19 **THE COURT:** Oh, I misheard?

20 **MR. HEBERLIG:** That's Hogenson.

21 **MR. LEACH:** For Brent Hogenson.

22 **MR. HEBERLIG:** We're talking about this witness.

23 **THE COURT:** We're talking about this witness, okay.

24 My hearing is so bad.

25 Can you what? Yes, can you talk? Of course, go right

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1 ahead.

2 **MR. REEVES:** Sorry to interrupt.

3 **THE COURT:** Go in front of the microphone.

4 **MR. REEVES:** I'd like to -- this issue is going to
5 extend into three witnesses: Ms. Prasad, Mr. Tejeda and
6 Mr. Hogenson. The issue of well being is going to extend into
7 two witnesses, Ms. Prasad and I would argue Mr. Hogenson. I'm
8 happy to elaborate on that.

9 And I think it's really important to understand that there
10 are three different settlement agreements led I believe by
11 Mr. Hogenson in the amount of \$750,000, so it's not \$75,000 for
12 all of them. Mr. Hogenson was paid \$750,000.

13 So I'll let my colleagues, a bit off the record, but I
14 want to emphasize to the Court that this extends into the next
15 I think three of the next four witnesses.

16 **THE COURT:** Well, let's take the 750 and put it to the
17 side for a moment, because that's the magnitude of a settlement
18 I think that deserves some further consideration by the Court.

19 But I don't know that a \$50,000 settlement really is very
20 probative of anything. I mean, you know, she was there for a
21 while, she was suddenly terminated. I mean, I think that if
22 you get into -- well, you were fired, weren't you, then,
23 well --

24 **MR. HEBERLIG:** Well, they're going to bring that out I
25 assume on direct.

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1 **THE COURT:** Well, I know, I've got to take it sort of
2 one step at a time.

3 You say, well, you were fired, weren't you? Yes, I was
4 fired. Then you want to say, well, did you receive any
5 compensation for your termination? And there are two answers
6 to it: Yes and yes, and 50,000, and, yes, and whatever the sum
7 is, and they can be divided.

8 If it's relevant that they -- I think it's -- if somebody
9 is fired -- well, I have to think about this more.

10 Maybe I should hear the Government and try to figure out
11 how it comes in. Why is it relevant? Why is it relevant to
12 the case?

13 **MS. GREEN:** Thank you, Your Honor.

14 We believe this is relevant and admissible under 408,
15 which explicitly allows for settlement agreements to be
16 admitted. It provides a non-exhaustive list of exceptions, one
17 of which is proving an effort to obstruct a criminal
18 investigation or prosecution.

19 We heard from Mr. Vaidyanathan today about Mr. Hogenson
20 raising his concerns with a number of regulatory agencies: The
21 SEC, the SFO in England, the FRRP, another regulatory body in
22 the U.K., and it's our position that these settlements show a
23 pattern of behavior by Autonomy to essentially silence
24 witnesses who could be witnesses to a criminal investigation
25 related to the false and misleading statements. And I think

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1 even looking at some of the language in the settlement
2 agreement shows, shows that point.

3 And I'm happy to point Your Honor to an example. But just
4 taking Ms. Prasad's agreement, which by the way had been
5 entered into after Mr. Hogenson had been terminated, and after
6 he had his settlement agreement, in addition to all the
7 confidentiality clauses, it specifically says, if there -- if
8 the individuals, in this case Ms. Prasad, receives a subpoena
9 or a document demand for documents or testimony, Prasad shall
10 immediately notify Autonomy of the receipt of such subpoena or
11 deposition notice or document demand, and shall cooperate in
12 any effort by Autonomy to object or to -- or quash such
13 subpoena or object to or obtain a motion for a protective order
14 related to such deposition notice or document demand.

15 Prasad understands that time is of the essence in
16 responding to such a subpoena or deposition notice or document
17 demand, and any delay in notifying Autonomy of the receipt of
18 such a document shall be severely prejudicial to Autonomy and
19 shall be deemed a material breach of this agreement.

20 So that's just one example from her agreement. But we
21 think there's a pattern here. And particularly thinking about
22 the defendant's openings where a large part of
23 Mr. Weingarten's, and I believe also Mr. Lincenberg's openings,
24 was about how Mr. Hogenson was terminated for just cause, we
25 think these agreements in this case are admissible and

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1 particularly relevant.

2 **THE COURT:** Well, I don't want to reach the issue of
3 Mr. Hogenson -- is that his name? I think that's a different
4 issue. I think that they certainly did highlight the reasons
5 for the termination, and so forth.

6 And when that becomes -- I mean, I want to deal with
7 further discussion on that. I don't need to -- I don't feel I
8 need to rule on it, because we're talking about this particular
9 witness. Can you introduce evidence of the, quote, settlement
10 agreement and amount with respect to this particular witness?
11 And I'm trying to figure out what is the relevance with respect
12 to this.

13 At this point, without hearing any cross about the
14 circumstances of her departure, not a single cross -- and I
15 understand you intend to ask the question, I'm not telling you
16 don't, you intend to ask a question "Were you terminated from
17 Autonomy," and I suppose you'll ask were you given any reasons
18 for it.

19 And then -- okay. Question, can she ask that? I assume
20 is that over your objection or not or you don't care or what?

21 **MR. HEBERLIG:** Well, we move to --

22 **THE COURT:** Just to that.

23 **MR. HEBERLIG:** We moved to exclude the terminations.
24 The Court, as I understand it, denied that motion. But, yes,
25 we do object. We think it's inappropriate, not proper 404(b),

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1 and the Government's argument is precisely the incorrect
2 argument you're permitted to make under 408.

3 They want to say that these settlement agreements were
4 hush money. It's preposterous on its face. Hogenson, Tejada
5 Prasad have all cooperated with the Government for years and
6 have never once spoken to Autonomy. The idea that those
7 settlement agreements obstructed a government investigation I
8 submit is frivolous.

9 **THE COURT:** I think they're called attempted
10 obstructions. I mean, to put it in the right context, listen,
11 you're not the first company and you have nothing to do with
12 it. Your client is not the first company to do non-disclosure
13 agreements, and so forth, that say the sorts of things that
14 that said.

15 Okay. In this case it appears to have been, from what I
16 can -- from what you've just said, ineffective. I mean, unless
17 of course you've taken some action with respect to recovery of
18 the amount of money that was paid.

19 **MR. HEBERLIG:** No.

20 **THE COURT:** Or anything along that line like written
21 to her and said that she's in breach of the agreement or
22 anything of that nature.

23 Okay. Absent all of that, I don't see how it fits 408(b).
24 I just don't know that it fits that way. I have other concerns
25 about a \$750,000 payment. I think that that -- I think it may

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1 be fair -- no, I think I'm not going to say anything until I
2 hear more about it.

3 Okay. But this is just this case with 50,000. So if
4 you're asking the question can you -- can you ask her what
5 happened with respect to her employment, I think the answer is
6 yes, that she was terminated. Can you ask the further
7 question: Did you enter into a settlement agreement with
8 respect to that matter, and I think she can say yes. As to any
9 of the terms, no.

10 **MR. HEBERLIG:** If she does that, then we have to bring
11 out the settlement agreement, because that will necessarily
12 imply that Autonomy admitted wrongdoing, when in fact the
13 settlement agreement says there is an express reservation of
14 liability, both sides, and we're going to wind up with a mini
15 trial.

16 **THE COURT:** You're saying you want the settlement
17 agreement in evidence?

18 **MR. HEBERLIG:** Absolutely not. I want you to preclude
19 them from eliciting that she entered into a settlement
20 agreement. It's not relevant or probative.

21 **THE COURT:** Well, I don't know that you have to say
22 agreement. It may be that you say did you resolve any claims
23 you had with respect to Autonomy?

24 **MR. HEBERLIG:** There were no lawsuits filed, so how
25 are any potential claims relevant? She was terminated. The

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1 issue is, I suppose the Government will say that --

2 **THE COURT:** Okay. Here is the problem with that.
3 Somebody's fired, right. Okay. The presumption is somebody is
4 fired, they did something wrong. They were fired. They were
5 fired. Well, did they fight back? Did they object to it? Did
6 they question the validity of their termination?

7 If you don't -- I think actually you're sort of right, in
8 that, if you go down the path, you have to stop it earlier.
9 You can't say whether she was terminated or not.

10 If she was terminated, and if that's relevant, then I
11 think she can say I resolved my claims with respect to -- or
12 the parties resolved their claims, however the words -- however
13 we fashion it.

14 **MR. HEBERLIG:** Obviously if that occurs --

15 **THE COURT:** Pardon?

16 **MR. HEBERLIG:** If that occurs --

17 **THE COURT:** Well, I think we have to talk about it.

18 **MR. HEBERLIG:** Well, if it does, let me just provide a
19 preview of the mini trial that will ensue. I will have to
20 examine her about the settlement agreement and the express
21 reservation of liability that both parties had. I'll have to
22 get into the pittance that Autonomy paid to settle this claim
23 that was tantamount to about a day's worth of work by a legal
24 team.

25 I mean, it's all a sideshow that has nothing to do with

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1 the issues the jury is being asked to resolve.

2 I mean, frankly, the termination --

3 **THE COURT:** Well I wonder, I wonder -- let's start at
4 the beginning.

5 I wonder why it is significant that she was terminated.
6 Let's think about that for a minute. I think it is significant
7 with whatever his name is. What is his name?

8 **MR. HEBERLIG:** Mr. Hogenson.

9 **MR. LEACH:** Hogenson, Your Honor.

10 **THE COURT:** Hogenson. This is what happens, you just
11 forget names.

12 Okay. Mr. Hogenson. I think it is significant with
13 respect to him. I mean, he was much higher up, he had a lot of
14 contact, and a lot has been made of it already in the -- in the
15 statement, so let's just put that to the side.

16 **MR. LEACH:** Your Honor, if I can inject just a little
17 bit on the record on this point.

18 First of all, the indictment alleges that Dr. Lynch
19 intimidated, pressured, and paid off persons who raised
20 complaints about or openly criticized Autonomy's financial
21 practices. So this is not 404(b). We allege hush money in the
22 indictment with respect to these three witnesses.

23 Now, with respect to Ms. Prasad, this becomes very
24 significant when Joel Scott testifies, because he's going to
25 say he asked Sushovan Hussain or Steve Chamberlain, I need to

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1 look at the testimony, why was Reena fired? And he's told
2 because she stuck her head over the parapet.

3 And we think the import of that statement is they were
4 asking too many questions. They were poking their nose where
5 they were on the right track, and this was an effort to silence
6 them from going to the FSA, from continuing to cooperate with
7 the SFO. We think it's clearly permitted by 408(b), and it has
8 great resonance with respect to Mr. Hogenson.

9 But the fact that she's fired is critical to sort of --
10 why do you fire Reena Prasad whose only job here is to collect
11 money from Capax? Why do you do that? You do that because
12 they're asking too many questions. That's a reasonable
13 inference based on the record here.

14 And I don't want -- if they want to argue \$50,000 is a
15 pittance to somebody, I can't wait for them to make that
16 argument to this jury. It's clearly probative of an overall
17 scheme to silence people who are asking too many questions at
18 Autonomy.

19 **MR. HEBERLIG:** Just because it's in the indictment
20 doesn't make it -- I mean, there's all sorts of things in the
21 indictment that are surplusage and not relevant.

22 These people aren't named in the indictment. There's this
23 vague hush money allegation that my memory is was in the
24 severed count. I could be wrong about that, but I thought it
25 was in Count 17. If it's not, regardless --

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1 **MR. LEACH:** I'm reading from Count --

2 **THE COURT:** Whoa, whoa, is it in the other counts or
3 not?

4 **MS. GREEN:** No, it's not.

5 **THE COURT:** Sorry?

6 **MR. LEACH:** I am reading from Count One of the
7 indictment, Your Honor.

8 **MR. HEBERLIG:** But the fact that something is in an
9 indictment as part of a background allegation --

10 **THE COURT:** Well, but that's notice. That is an
11 indication of notice.

12 **MR. HEBERLIG:** Sure. But they noticed it as 404(b)
13 for a reason, because I'm sure they weren't prepared to rely on
14 that alone. And then they waived the argument by withdrawing
15 it from their motion, so we were not afforded a full
16 opportunity to brief this issue, and here we are the day before
17 the witness goes on. I mean, there's -- we haven't had the
18 opportunity to brief 408. I believe it clearly doesn't apply
19 to this situation. I believe it's wholly inappropriate to
20 argue hush money from no admit/no deny settlements. That's not
21 what these are about. These are nuisance settlements, and
22 there's no evidence whatsoever that they were intended to or
23 had the effect of obstructing any investigation. That's just
24 government making stuff up.

25 **THE COURT:** Well, I'm not quite sure it's making it

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1 up. It's in the words of the document itself.

2 **MR. HEBERLIG:** The words of the document are standard
3 civil settlement. Every company that settles with an employee
4 includes all sorts of releases and give us notice if you're
5 ever subpoenaed relating --

6 **THE COURT:** This isn't just noticing, it's telling
7 them to object. I don't have it in front of me. Do I have it
8 in front of me? Is it in the exhibit book or something?

9 Okay. Well, I think maybe what I have to do is think
10 about it, try that one. If you want to write something on
11 it --

12 **MR. HEBERLIG:** Sure.

13 **THE COURT:** -- you've got the whole evening.

14 **MR. HEBERLIG:** That's fine. We will endeavor to do
15 that.

16 And I guess the question, you asked about
17 cross-examination, and sort of what -- you know, the
18 Government's initial position was if we opened the door, then
19 the settlement agreements would come in. But it would be
20 helpful to understand, you know, what is permissible and what's
21 not on cross.

22 **THE COURT:** Oh, well, of course, absolutely. So, I
23 mean, I think before she takes the stand tomorrow, I have to --
24 I have to decide.

25 **MR. HEBERLIG:** Right. But, no, what I'm saying is,

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1 depending on your ruling, if you keep it out, okay, but say
2 that certain things could open the door, I mean, I can tell you
3 what I'm expecting to do on cross and it might change depending
4 on the Court's ruling. I don't want to walk into something and
5 then have the Court say, oh, now the door is wide open, because
6 I might decide it's not worth it. So that's the type of thing
7 that frankly we would have briefed had the Government not
8 withdrawn its request to put these into evidence.

9 But, you know, we can try to put something together
10 tonight. We did brief the issue, and the Government in
11 response, rather than oppose our motion, said we don't intend
12 to do it. So, I mean, our position is clear and on the record,
13 you know, I think if there's support for their position that's
14 beyond what's been said in court today, the onus is really on
15 them.

16 **THE COURT:** Did he say -- I mean, refresh my
17 recollection, did the Government say, no, no, we're not going
18 to go into this?

19 **MR. HEBERLIG:** Yes, they did.

20 **MR. LEACH:** We said we did not currently intend to
21 offer the settlements unless they opened the door. They opened
22 the door wide open in Opening, Your Honor. Mr. Weingarten
23 stood up and said Hogenson was rightly fired because he was
24 involved in this payroll fraud, and, you know, the accounting
25 allegations had nothing to do with it.

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1 We think the door was clearly opened by the Opening. You
2 know, having looked closer at 408, we see it's a rule of
3 inclusion, not exclusion, there are exceptions. And we submit
4 this trial is about was this really -- was Hogenson really
5 fired for good cause? If so, great, the jury will find against
6 us. We say he was fired because he was asking too many
7 questions, because they knew he was asking too many questions,
8 because they wanted to silence him with the FSA, and it was an
9 effort to obstruct.

10 **THE COURT:** Well, I think I'm talking about
11 Ms. Prasad, not Mr. Hogenson.

12 **MR. HEBERLIG:** They didn't flip positions based on the
13 opening. We got notice they intended to do this the night
14 before the openings. And their request was we could open the
15 door on cross-examination. I think that that's a convenient
16 argument. But their position was clear. We don't intend to do
17 it unless the door is open on cross. Arguments are arguments,
18 but we have a witness on the stand.

19 **THE COURT:** Well, I don't quite subscribe to that,
20 because I think an opening statement, an opening statement is,
21 while it's not evidence, is a pretty big salvo to the jury as
22 to what the case is all about. And so I know it's not
23 evidence. I know it's just a form of argument, but it really
24 is ringing a lot of bells.

25 And I sit here, and I'm convinced that at least the

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1 defense takes the position that Mr. Hogenson was terminated
2 because of his malfeasance or ineffective service as a person.
3 I think Mr. Weingarten said, well, wouldn't you fire him
4 anyway? Look what he did. It was graphically, it was
5 graphically argued to the jury, or presented, that Hogenson was
6 ejected because of ineptitude and a shortage of his
7 performance, and that's been fought in questions that I've
8 heard so far in the case. Do you have any -- the witness, the
9 first witness said: I thought he was good, I never knew that
10 he had done anything wrong, so forth and so on.

11 And by the way, that wasn't in your cross-examination. I
12 mean, you didn't -- I don't think, maybe I can't recall
13 everything, but I think the first cross-examination didn't
14 address that issue. But maybe Mr. Lincenberg's, I don't know
15 whether it will be you or your colleague, plan to -- you
16 haven't done your cross, so I haven't heard anything about
17 that.

18 **MR. LEACH:** Your Honor, I think the first
19 cross-examination was trying to suggest that Mr. Hogenson was
20 slow in raising these payroll issues --

21 **THE COURT:** Yes, that's right.

22 **MR. LEACH:** -- and trying to pass them off as errors,
23 and this is such egregious misconduct that we have to fire him.

24 **THE COURT:** That's right.

25 **MR. LEACH:** We think the evidence already shows and

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1 will continue to --

2 **THE COURT:** But he is going to be separately
3 addressed, separately addressed.

4 I'm just trying to figure out what to do about this
5 witness, and I haven't made up my mind. If you want to tell me
6 anything tomorrow morning or tonight, you can file. I'll read
7 it at 3:00 a.m. I wake up at 3:00 a.m. to do the Wordle, so I
8 can be the first person on the West Coast to do the Wordle, but
9 I could also read whatever you write.

10 You. When I say "you," Mr. Weingarten, I mean the large
11 you, the people who are seated behind you.

12 **MR. WEINGARTEN:** I understand.

13 **THE COURT:** Those people.

14 **MS. GREEN:** Your Honor --

15 **THE COURT:** Yes.

16 **MS. GREEN:** I would like to briefly address the other
17 point that Mr. Heberlig raised. I understand you're deciding
18 on the settlement agreement issue, but he did also talk about
19 the distress that she suffered after she was terminated.

20 Let me just tell you in one sentence what she was expected
21 to say, so we have the same framework.

22 I did intend to elicit that when she was terminated, she
23 will say that that had a drastic impact on her, that she
24 suffered from severe anxiety and depression at that point, and
25 that since that time she has struggled to hold down a job. So

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1 that's all she's going to say. It's going to be about one
2 minute.

3 **THE COURT:** She's not going to say it on my watch.
4 Just listen, no, no, no, because that -- then they, you know --

5 **MS. GREEN:** But may I just briefly --

6 **THE COURT:** By the way, I don't doubt that that
7 happened. That's not the issue, whether it happened or not,
8 but it's not probative because it doesn't prove anything. It
9 proves her damages. It proves her damages, but it doesn't
10 prove anything.

11 You know, they're not contesting we didn't terminate her,
12 and they're not contesting that they didn't pay her money, if
13 that becomes an issue. And, you know, I mean, wow, I mean, it
14 really does -- it really does introduce --

15 **MS. GREEN:** I agree.

16 **THE COURT:** -- A lot of collateral matters and
17 tremendous sympathy for her at the expense of the defendants.

18 **MS. GREEN:** I agree with Your Honor on all those
19 points.

20 **THE COURT:** Oh, well, good.

21 **MS. GREEN:** The only reason that I believe that
22 this -- and I hear those concerns. The reason I believe it's
23 particularly relevant in this case is not for those reasons,
24 but because it goes to her credibility, and I want you to think
25 back to Mr. Lincenberg's --

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1 **THE COURT:** How does that go to her credibility?

2 **MS. GREEN:** I'm going to explain.

3 So Mr. Lincenberg's opening, if you'll recall, he spent a
4 significant amount of time talking about how long ago this
5 conduct was, and he suggests, and I think he even used the word
6 in opening, he made the point and strongly suggests that these
7 individuals have been meeting with the Government extensively
8 since that period of time, and that they have essentially been
9 programmed now by the Government to tell the story --

10 **THE COURT:** Well, I want to address something on that
11 issue, because I think I don't want to blindside anybody.

12 First of all, it seems to me any party is perfectly free
13 to argue that the passage of time would dim a recollection, you
14 know, and the passage of time has been considerable in this
15 case.

16 Number 2, I think that they can point out that there were
17 multiple meetings with the U.S. Attorney and where there was a
18 discussion of what the testimony would be. I understand that.
19 Of course they're looking at contemporary emails. It's not
20 like they created the emails two years ago.

21 What I am concerned about, and I have received no
22 indications that it would be your intention, so I'm not -- I'm
23 not suggesting it would be, but I don't want to hear any
24 argument or suggestion that the delay in bringing this case was
25 occasioned by the Government, and I think the reason is

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1 obvious, right? Right? Any problem with that?

2 **MR. LINCENBERG:** No problem with that.

3 **THE COURT:** Directly or indirectly.

4 **MR. LINCENBERG:** That's not part of our defense.

5 **THE COURT:** I wouldn't think so.

6 Okay. So there's no mention about that.

7 I do think, though, look, I mean, witnesses come here
8 today; why couldn't you comment that maybe they could have come
9 here the day before yesterday or five years ago or four years
10 ago, but that's so much. I mean, still, people's recollections
11 do fade over time, and I think that's a perfectly proper line
12 of argument with respect to it.

13 **MS. GREEN:** And the reason her memory hasn't faded is
14 precisely because this was such a drastic event in her life.
15 That was our position. So it goes to their suggestion that,
16 you know, their story has changed, they've been programmed --

17 **THE COURT:** They haven't done any of that yet. They
18 haven't done a bit of cross-examination. If they do, if they
19 do suggest, well, how, you know, like how can you remember
20 these things? You know, the passage of time, how can you
21 remember them? Then of course you can go, well, this was a
22 tremendously traumatic event, and let me tell you what
23 happened, why I was traumatized. But I don't think they're
24 going to go that way.

25 **MR. LINCENBERG:** Not with this witness.

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1 **THE COURT:** And not with what I just said.

2 **MR. LINCENBERG:** Yeah. Your Honor, one other small
3 point.

4 **MR. REEVES:** Your Honor, can I please add to the
5 proffer on this very issue about harm to the witnesses, which
6 it will come up in a very different and unusual way, I
7 anticipate, when we get to Mr. Hogenson.

8 We have the opposite problem with Mr. Hogenson than
9 Ms. Prasad, insofar as he, I believe -- well, let me put out
10 there. He has declined to meet with and prepare for his
11 testimony since approximately 2015.

12 Mr. Hogenson has moved out of the country, and has -- a
13 highly trained professional has decided to effectively withdraw
14 from corporate America and live in Latin America. I think he's
15 doing fine, but I know that he actively wants to not remember
16 this case, and I think that is in fact probative of a trauma
17 that he endured as a result of this --

18 **THE COURT:** I don't know --

19 **MR. REEVES:** I'm not asking to introduce it.

20 **THE COURT:** Look, I never got my medical agree. I
21 never -- I have no idea what trauma is. I see trauma every day
22 in this place.

23 Now, I will tell you that if he becomes an uncooperative
24 witness, a witness who is not forthcoming, as you've described
25 him, I don't care whether it's his trauma, whether, you know,

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1 the defense allegedly caused his trauma or something else
2 caused his trauma. I'll let you impeach him. I'll let you
3 show him documents. I'll let you go some distance, I don't
4 know how far, and it depends on what he says, and it depends on
5 what he's reluctant to say, and what he does say, and then what
6 he would say, what I would allow you to say about him.

7 I don't know. I don't know. I said that he's in a
8 different category, and I still think he is.

9 **MR. REEVES:** Two more details, Your Honor.

10 **THE COURT:** Yes.

11 **MR. REEVES:** I think it's appropriate for me to say
12 that there were threats of wrongful termination made by
13 Mr. Hogenson against Autonomy, and that is the context in which
14 the settlement was arrived at; and, second, the
15 successor-in-interest --

16 **THE COURT:** Well, are we talking about Hogenson,
17 right? I don't want to talk about Hogenson right now.

18 **MR. REEVES:** Okay.

19 **THE COURT:** I'm dealing with Prasad.

20 **MR. LINCENBERG:** I have a small point with the two
21 witnesses, Prasad and Ganesh.

22 I understand that there's going to be witness schedules,
23 and counsel wants the witness -- this next witness to come out
24 of order, and so forth. I get it. We'll try to be flexible.
25 We didn't object on this occasion.

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1 I also don't want the defense to be jammed on this. You
2 know, this is something --

3 **THE COURT:** She's almost finished.

4 **MR. LINCENBERG:** It would have been helpful for us to
5 hear about this a little earlier. We have, you know, sometimes
6 there's different lawyers doing different witnesses and
7 documents in the room.

8 **THE COURT:** I agree with you.

9 **MR. LINCENBERG:** And now they're saying this witness
10 is still going, and I have no idea how long the witness is
11 going to go tomorrow.

12 **THE COURT:** I do. How long do you have with her?

13 **MS. GREEN:** It should be --

14 **THE COURT:** Assuming we don't go into any of the
15 things that we've just discussed.

16 **MS. GREEN:** I should be able to finish within an hour,
17 so before the --

18 **THE COURT:** That long?

19 **MR. LINCENBERG:** Okay. Well, we're going to probably
20 have an hour. I don't know what the Lynch team has.

21 **THE COURT:** Well, I'm sorry if she has a 1:30
22 appointment. I mean, I'm not going to -- we're going to finish
23 with her. I don't know what to do about that. If I have to
24 phone some office or something, I'll do that.

25 But I will start with her at 9:15. I'll be out here by

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1 9:00 to tell you what I want to do about this issue, and then
2 just -- and then just conclude with her and do your thing.

3 **MS. GREEN:** And we --

4 **THE COURT:** I mean, really? The cross-examination
5 here of her?

6 **MR. HEBERLIG:** Not from me.

7 **THE COURT:** I'm just trying to figure out, did he say
8 anything you disagreed with?

9 **MR. LINCENBERG:** We had -- we've already had 45
10 minutes, and we're going to have another hour. I don't know
11 how long it's going to go. It may be that we get done with
12 her. I just don't want to be jammed when something like this
13 happens, that's all.

14 **THE COURT:** Nobody is going to jam you. Nobody is
15 going to jam you. You're going to be unjammed. Just think of
16 what she said and whether, are you going to prove that she's
17 wrong, that no one told her to go after these accounts
18 receivable? They said, look, you want the Vatican to pay?
19 Show up. You know where they are. Knock on the door. But I
20 guess the Vatican didn't actually owe any money; is that right?
21 I don't know. Do you care to comment on that?

22 **MR. HEBERLIG:** End of the day, I don't believe the
23 deal finished with the Vatican. MicroTech owed the money.

24 **THE COURT:** Yeah. But Vatican had no legal obligation
25 to pay Autonomy. It was an end user, right?

1 **MR. LEACH:** Correct.

2 **THE COURT:** Okay. Well, there you go.

3 **MS. GREEN:** Thank you.

4 **THE COURT:** Goodnight everybody.

5 **ALL COUNSEL:** Goodnight Your Honor.

6 (Adjourned at 4:54 p.m.)

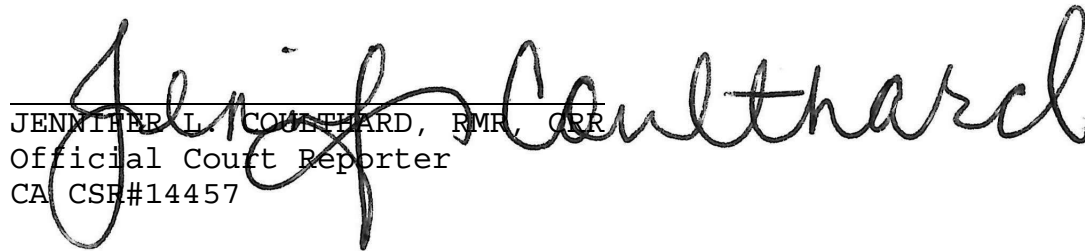
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9 **CERTIFICATE OF REPORTERS**

10 We certify that the foregoing is a correct transcript
11 from the record of proceedings in the above-entitled matter.

12
13 

14 _____
15 RHONDA AQUILINA, RMR, CRR
16 Official Court Reporter
17 CA CSR# 9956

18 
19 _____
20 JENNIFER L. COUTHARD, RMR, CRR
21 Official Court Reporter
22 CA CSR#14457

23
24 DATED: MARCH 20, 2024
25